THE INDIAN STAMP LAW.

This work has been patronized by all the Local Governments in British India.

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THE

INDIAN STAMP LAW

CONSTITUTED BY

THE INDIAN STAMP ACT 1899,

AS AMENDED BY

ACTS XV OF 1904, V OF 1906, VI OF 1910, AND I OF 1912,

AND BY ACTS IV AND X OF 1914.

ALONG WITH

EXTRACTS OF THE STAMP DUTIES IN FORCE IN BRITISH INDIA FROM THE EARLIEST DATE

AND

COPIOUS NOTES

BY

WALTER RUSSELL DONOGH, M.A.,

OF THE INNER TEMPLE, BARRISTER AT LAW,
AND AN ADVOCATE OF THE HIGH COURT AT CALCUTTA,
AUTHOR OF "THE LAW OF LAND ACQUISITION AND COMPENSATION," AND
"THE HISTORY AND LAW OF SEDITION."

" The subject is not to be taxed without clear words."

FIFTH EDITION.

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"What the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain."—LORD COLLINS.

"If a vendor can convey property sold to the purchaser without the execution of any instrument, he can convey it without paying any stamp duty The Crown cannot have the stamp-duty unless the parties choose to effectuate the transaction by an instrument which of itself conveys the property."—LORD ESHER.

PREFACE TO THE FIFTH EDITION.

Another edition of this work having been called for, the author has taken the opportunity of introducing certain improvements which have been suggested to him. Owing to the addition of the latest case-law, both English and Indian, and consequent increase in bulk, it was found expedient, in order to keep the volume within convenient dimensions, to apply the pruning knife in various directions. The most extensive excision effected has been made in the Appendices, which contained much interesting though useless matter. In Appendix D, for example, the only really valuable parts of the former stamp-duties were those affecting instruments of a permanent character For this reason an excerpt has been made from the former schedules of the duties levied on deeds of Conveyance, Gift, Exchange, Lease, Mortgage, Partition, Release, Settlement, Trust, Transfer, and *similar dispositions of property. These are the only* instruments which are likely to crop up at the present day.

Again, the executive rules relating to the custody and sale of stamps, and framed by the various Local Governments under sec. 74 of the Act, however important to the officers directly concerned, were of little interest to the general public. They have, accordingly been excluded from the present edition. If required, they may be referred to in the various stamp manuals which are issued from time to time by the Local Governments for the guidance of officials

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Appendix E which contains Tables for calculation of the *ad valorem* duties remains *in statu*, but the Tables have been corrected to suit the altered duties.

Finally, the Introduction has been restored to its previous limits by the removal of much preliminary matter to a more appropriate situation in Appendix C. It is now more of a historical and explanatory summary of the law, as it should be Such are the principal changes made in the line of reduction. On the other hand, the additions to the book are equally substantial.

The latest amendments of the Act have been incorporated with the text. Besides the modifications introduced by the amending Acts, certain alterations have been effected in the text by the Decentralisation Act and the Repealing and Amending Act of 1914. The text of the Act and the notes, which have been thoroughly revised, are set in larger type than before. The case-law has been brought up to date by the addition of important decisions of the highest courts in England and in India.

The Stamp Rules framed by the Governor-General in Council under sec. 75 of the Act, occupy a convenient position in Appendix A. A new set of Rules was issued in August, 1914, and the author is indebted to the Financial Department of the Government of India for an advance copy of them.

Appendix B contains the latest General Notification embodying all the remissions or reductions of stamp-duty made by the Governor-General in Council under sec. 9 of the Act. This was issued in 1909, but the additions subsequently notified from time to time have been incorporated down to the latest possible date.

It is hoped that the book in its present form will maintain its reputation for completeness and accuracy.

CALCUTTA.
January, 1915

W. R. D.

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mped unless it were written on stamped paper 'bearing the nature of the Superintendent of Stamps,' or his assistant The e of stamps was restricted to specially authorised agents. rsons selling without authority were liable to fine, or, in default, imprisonment extending to six months The offence of forging stamp, or using or keeping with guilty knowledge any such ged stamp, was punishable with corporal punishment extend- ; to '39 stripes with the corah, and to imprisonment and hard bour for seven years.'

By Regulation VII of 1809 the provision requiring all stamp per to be authenticated by the Superintendent of Stamps or her authorized officer under him was rescinded, but with a oviso that such rescission should not affect the sale of any mped paper already issued or which might have been already thenticated until the 1st January 1810 The stamps themselves re altered, so as to be of one kind for all instruments and aring one impression, "Law et cætera Papers" The stamp ities on *sunnuds* to vakils were abolished

Reg VII, 1809

It was found, however, that the new provision limiting the e of stamps which had been authenticated under the two pre- ous regulations to the 1st January 1810, was unnecessary, and e restriction was accordingly removed by Regulation XII of 810, which provided that all stamped paper that had been thenticated according to the rules existing previous to the en- tment of Regulation VII of 1809, should be admitted and ed in the Courts of Justice in the same manner as if they had t been authenticated

Reg. XII, 1810.

By Regulation XII of 1812, the rule as to stamping of a ocument written on insufficiently stamped paper, after 60 days, as rescinded. After the 1st of November 1812, no obligation for e payment of money, nor any other instrument generally, so ecuted, could be rectified after 60 days, or received in evidence. he operation of this Regulation was limited to Bengal, Behar, rissa and Benares.

Reg XII, 1812.

Regulation XVI of 1813 which followed provided retrospect- ely that no deed or instrument whatever should be considered valid by reason of the stamp not being authenticated by the endor of the stamp

Reg. XVI, 1813.

Important changes were effected by Regulation I of 1814, perating from the 1st of May, which repealed generally all the rules

Reg I, 1814

the receipt of money at the same rates as those prescribed for obligations. On all other deeds, with some few exceptions, the stamp duty was doubled. A new provision was added, whereby the holder of an unstamped document might have the omission rectified by presenting it to the Collector, and paying a penalty of five times the value of the stamp, if within sixty days, and of ten times the value after that period. It was open to the Board of Revenue, however, to remit the penalty on proof of the absence of any intention to evade the stamp duty. But the wilful execution of any instrument with such intention was punishable with a fine equal to ten times the proper stamp duty, of which any informer would receive a moiety.

Reg. XIII, 1806.

The next provision relating to stamp duties was Regulation XIII of 1806. It was intended to check the practice of forging stamps. The operation of this and the subsequent regulations, with one exception, was expressly declared to extend to the whole of the 'provinces subject to the immediate Government of the Presidency of Fort William.' This included the newly acquired territory then known as the 'Ceded and Conquered Provinces,' and subsequently incorporated under the title of the North-Western Provinces, now known as the United Provinces of Agra and Oudh. They consisted of the territory ceded by the Nawab Vizier in 1801 (*see Regulations i & ii of* 1803), by Dowlut Rao Scindiah, and by the Peishwa, in 1803 (*see Regulation viii of* 1805). Regulation XIII of 1806 was intended to take effect on the 10th of July 1807, but before that date, on the 16th of April, Regulation VIII of that year was introduced rescinding a considerable portion of it. The provisions jointly enacted by the two regulations are as follows:—The Superintendent of Stamps, or other specially authorised officer acting under him, was required to authenticate stamp papers before issuing them, by endorsing his official signature thereon; and all Collectors, or other public officers authorised to sell and selling stamps were also required to authenticate the same by endorsing thereon the word 'sold,' the date, and their official signature. Failure to conform to any of these directions was punishable with 'dismission from office.' It was further provided that, as soon as a sufficiency of stamps so authenticated should be reported to have been received by the Collector of any Zilla, the Governor-General in Council would notify by proclamation in such Zilla, that any instrument executed thereafter would not be regarded as duly

Reg. VIII, 1807.

sufficient that one roll or sheet were stamped, provided it bore the signature of the party or parties and of the attesting witnesses. The penalty for evading the stamp law was raised to twenty times the value of the proper stamp The rules as to counter-stamping at the Treasury were maintained, and the counter-stamp was to bear the words 'General Treasury.'

Reg. XVIII, 1825.

Regulation XVIII of 1825, which came into force on the 25th of August of that year, in pursuance of a treaty concluded between the British and Netherlands Governments on the 17th of March 1824, by which the latter ceded the settlement of Chinsurah and the factories and lands held by them at Calcapore, Dacca, Fulta, Patna, and Balasore, extended generally the provisions of the Bengal Regulations to those places. It also provided for the admission in evidence as valid of 'all deeds whether on stamp paper or otherwise, that may have been regularly and legally executed according to the Dutch Law or established local usage' previous to the 25th of August 1825

Reg. XII, 1826

In the year 1826 the first enactment relating to stamp duties for the town of Calcutta was made This was Regulation XII of 1826, and it was practically, a recapitulation of Regulation XVI of 1824, which was intended for the provinces It was subsequently repealed by *Act XXXVI of 1860 The High Court of* Calcutta has observed in *Mookerjee v Mookerjee* [W R. (1864), p 289] that it was a matter of public notoriety that this Regulation though passed was never registered in the Supreme Court, and never had effect in Calcutta, but from section 1 of Act XXXVI of 1860 it would appear that this omission was rectified by the corresponding Regulation enacted on the 14th of June 1827, and registered in the Supreme Court at Calcutta on the 12th of July 1827, from which date therefore it would appear to have taken effect.

Reg X, 1829.

One other regulation on the subject of stamp duties was enacted for the provinces subject to the Presidency of Calcutta. This was Regulation X of 1829, which was an amplification of Regulation XVI of 1824. It provided that a document intended to have effect in the interior was not to be considered as not duly stamped, merely because it happened to bear a stamp prescribed for the town of Calcutta Authentication of stamped papers was to be regulated by the Governor General in Council by order. Every stamp paper was to be distinguished by two impressions, each speci-

as to stamping of instruments contained in the previous Regulations. *The rule for authentication of stamps by the Superintendent by endosement of his official signature, repealed by regulation VII of 1809, was revived* Stamps were, moreover, to be 'counter-stamped at the Treasury,' and no stamp was to be considered valid without the counter-stamp An instrument, not duly stamped, could be rectified by presentation to the Collector within 60 days, *with penalty of ten times the proper* stamp duty. A new and uniform set of stamps, as well as a revised rate of ***ad valorem*** stamp duties, was established for all instruments. Deeds of contract, gift sale, mortgage, and the like were for the first time charged according to the value of their subject, and not according to the quantity of paper used in engrossing The stamps were impressed either on paper or on the leaf of the taur tree (taur pattah), but parties so desirous could obtain impressions of stamps on vellum or parchment by special request

Reg X 1814.

Regulation X of 1814, which followed, merely declared that 'all engagements which had been or might be contracted between Government and individuals, and likewise the various instruments mentioned in section 9, Regulation I, 1814, to which Government had been or might be a party, should be received and admitted in evidence in the different Courts of Justice although written on plain or unstamped paper anything contained in the said regulation to the contrary notwithstanding'

Reg XXVI, 1814

By Regulation XXVI of 1814, provision was made for authenticated copies of documents being stamped. They were made chargeable equally with their originals All security bonds for no specific amount, as well as all deeds of contract, partnership or agreement not relating to any specific sum or value, were to *be executed on stamped paper of the value of one rupee.*

Reg XVI, 1824

Regulation XVI of 1824, which followed, made important innovations New paper for the impression of stamps of high value, specially manufactured in Europe and bearing in watermark the device of the East India Company's arms, was introduced The character of the new stamped paper superseded the necessity of authentication by the Superintendent, but the original stamped paper was still held to require it, if of or above the value of eight annas The duties were altered and extended, and it was provided that where the engrossment of a deed required more than one roll, it was

working and in its explanation, it should be as clear as possible, so that people who desire to pay proper duty upon their documents and who have no intention of evading the duty in any way, may thoroughly and clearly understand the obligations which rest upon them. There are also cases in which we find that the provisions of the law as they stand have been evaded, partly from apparent misunderstanding and partly, no doubt, because a lawyer, when he is acting for his client, is bound to carry out the transaction entrusted to him in such fashion as to burden his client in the least possible measure with duty.

Bills of Exchange.

"The Act as it at present stands," he continued, "necessarily quotes documents by their English names. A bill of exchange is a document which is established in a very well known form by English Mercantile Law. In this country, very naturally, the English forms of these documents are not the same as those adopted by native merchants in their transactions, and questions have consequently arisen with reference to mercantile documents, which have the same purpose in Indian commerce that bills of exchange have in English commerce, whether they are liable to duty as bills of exchange. Now, I may mention that in the English Stamp Act bills of exchange have got a specially wide definition. A bill of exchange for the purposes of the Negotiable Instruments Act is defined in the English law relating to negotiable instruments. But in the English Stamp Act it is prescribed that for the purposes of that Act a bill of exchange shall mean a very much larger class of documents than is included within the definition of the Negotiable Instruments Act. We have now taken that English definition and we have brought it into our Indian Stamp Act. The result will be that we shall include, mostly under the one minimum rate of duty, a number of instruments which at present escape duty because they are drawn in the native character and are not called hundis, the native hundi being the only name that is expressly included in the term bill of exchange.

Promissory notes.

"The same course we follow with regard to the definition applying to promissory notes. We have introduced into our present Act a definition of promissory note taken from the English Stamp Act. We do not, except in one small particular, propose to alter the duty which is levied upon bills of exchange and cheques, cheques being only one of the varieties of bills of exchange. The intended alteration is that we do not propose to carry on the existing exemption in favour of bills of exchange

of any statute relating to the duties of stamps. This was repealed by Act XVIII of 1869, after having been in force from the 29th of June 1840 to the 1st of January 1870. Act IX of 1842, which similarly extended the provisions of 4 & 5 Vic., c. 21, entitled 'An Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties,' provided for the levying of stamp duty on such instruments, not only as for a release, but also as for a bargain and sale or lease for a year. Act XV of 1859, an Act for granting exclusive privileges to inventors, provided, for the use of a stamped paper of Rs. 100 in the case of petitions for leave to file a specification of an invention. This provision was repealed by Act XVIII of 1869.

Act X, 1862.

Act XXXVI of 1860 was amended by Acts XL and LI of the same year and finally repealed by Act X of 1862. The latter Act underwent some amendations by Acts XVIII of 1865 and XXVI of 1867, and was finally repealed as regards stamp duties by Act XVIII of 1869, which in its turn was replaced by Act I of 1879.

Act XVIII 1869

Act I, 1879

Act I of 1879, which immediately preceded the present Act, underwent, during the twenty years of its existence, numerous alterations. It was amended no less than nine times. The amendments are to be found in the following Acts, *viz.*, Acts IX of 1881, I, V and XVIII of 1888, VI of 1889, XX of 1890, XII of 1884, VI of 1894 and XIII of 1897. These amendments have been embodied in the present Act.

The Present Stamp Law.

Act II, 1899

Act II of 1899, has effected considerable changes in the law. The Hon'ble Member who introduced the Bill in Council summarized in his speech on that occasion some of the principal amendments made.

Defects in the law.

The main defects in the Act might be described as follows: "First, there are cases" he said "in which the law, for want of clearness, has failed in its intention. The stamp law differs from most other revenue laws in this respect, that it is left very largely to a sort of automatic operation; that is to say, it is applied by persons themselves to their own transactions, and the burden of its interpretation rests, not merely upon the lawyer, but upon the layman. It is all the more necessary, therefore, that in its

working and in its explanation, it should be as clear as possible, so that people who desire to pay proper duty upon their documents and who have no intention of evading the duty in any way, may thoroughly and clearly understand the obligations which rest upon them. There are also cases in which we find that the provisions of the law as they stand have been evaded, partly from apparent misunderstanding and partly, no doubt, because a lawyer, when he is acting for his client, is bound to carry out the transaction entrusted to him in such fashion as to burden his client in the least possible measure with duty.

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Deed of adoption

"There are only two other cases" he added "in which we have increased the duty, or levy a duty which is not at present provided for The first is the case of a deed of adoption. A deed of adoption is defined in the Indian Act as one conferring authority to adopt, and is chargeable with a duty of ten rupees There is no duty payable upon instruments recording adoptions. We propose to include these in the definition of deed of adoption, and thus to extend the ten-rupee duty to cases of adoption An adoption very frequently conveys to the person adopted very valuable rights indeed, and it is a document which mostly passes between persons possessing ample estate. There seems to us no reason why these deeds should be exempted from stamp duty.

Perpetual lease

"The other case to which I wish to refer is that of a perpetual lease. It is provided in the existing law that a perpetual lease is chargeable only as a conveyance for a consideration equal to the amount of one year's rent. One year's rent is a very small standard of duty of what may be really a conveyance by sale of a very valuable property Under these circumstances we pro-

pose to regulate the duty, not upon a consideration equal to one year's rent, but upon a consideration which is equal to ten years' rent.

Power-of-attorney

"It will be observed also under the head of power-of-attorney, that we have provided for one class of evasion which is not unfrequently practised under the law as it stands, namely, the facility given for effecting mortgages and the like by what is in form only a power-of-attorney. A power-of-attorney when it is drawn for a purpose like this, will pay a duty equal to the duty payable in respect of the conveyance of the property for the assignment for which the power-of-attorney is drawn up. There are also one or two cases, such as petty partnerships and petty sales by order of court, in which we have reduced the duty at present assessed.

Debentures

"So far as regards increases of duty, which we propose to introduce into the present law, it will be seen that they are not very many. We have further taken the opportunity of making special provision in the Act with reference to debentures. There is at present no special provision with reference to debentures. They are dealt with under the general conditions of bonds. But since the law of 1879 was passed, debentures have come very largely into use, and the practice of limited companies issuing debentures has been extended very widely. We have, therefore, made special provision relating to debentures. We do not alter the tax upon them; they pay the same duty as is payable on bonds under the existing law; but we have incorporated in the existing law one kind of exemption which has been given by notification, namely, we have provided that in cases of debentures issued in pursuance of a mortgage-deed they shall be exempted from further duty; that is, the duty shall be payable once upon the mortgage-deed, and not again upon separate debentures issued in conformity with it. The provision is intended for the benefit of limited companies, and does not apply to private persons or proprietors of estates issuing debentures as is now sometimes done. Such debenture-issuers will be responsible, not only for the payment of the duty on the mortgage, but also for the payment of the additional duty which is required under the existing law for debentures issued under the mortgage. We have also for the facility of business connected with debentures provided in the Act itself for the renewal of debentures without the payment of any extra duty. At present, when a company wants to renew

should in such a case be refunded. We have therefore amended the existing Indian law in this respect so as to bring it into conformity with the English law.

Unused stamped forms.

"In section 51 we have inserted a provision which will give certain facilities to companies which, in the course of their business, keep a considerable number of stamped forms for use. Cases have occasionally arisen in which these forms have ceased to be useful for the purposes for which they were prepared. There are no provisions in the existing law by which a refund of the duty paid on such forms can be claimed, although claims made in such cases have been considered by Government, and refunds made by executive order. We have thought it better to provide greater facilities in this respect and have empowered the chief revenue authority to give refunds in these cases. In section 64, the general penalty section, an alteration has been made by including as an offence under the Act the doing of an act with intent to defraud. If the English Act be referred to, it will be found that the general penalty clause is much wider than the section proposed.

Inspection of records.

"In the chapter relating to supplemental provisions (Chapter VIII) there is one new clause, which we have taken from the English Act, and which subjects every public officer, and therefore every Judge of a Court, who is in charge of records of any description, to give access to the revenue authorities for the purpose of making any enquiry to determine whether any document is insufficiently stamped. In transferring that section from the English to the Indian Act we have omitted the penalty clause, because we consider that the Judges and other public officers in this country are likely to conform to their legal obligations without being threatened with a penalty of ten pounds in case of default. There is one alteration we have made in a small matter. We have provided that one anna adhesive stamps may be sold without any license being necessary.

Schedule.

"In the Schedule to the Act we have made several changes in form which we believe will conduce very largely to public convenience. We have removed exemptions from their position in a separate schedule of exemptions and placed them in the schedule of duties under the articles to which they refer. Another change is that we have made the ascertainment of duty more direct and more easy. For example, the three tables of duty under the heads of bill of exchange, bond and conveyance

are at present drawn up in a very curtailed form It is impossible, when considerable amounts are involved, without the aid of paper and pencil, to make out from the different tables the duty payable on a particular instrument By extending the table we have made it easy for a person by a reference to the schedule to ascertain directly what the particular duty is (See *Appx E*)

"Besides the exemptions which are mentioned in the Act itself there are a large number which have been effected by notification These refer chiefly to documents which arise in the course of the business of public departments If we bring these into the new Act, we will crowd the schedule largely with matters of no general public interest We therefore propose to continue the present practice and to provide for all these exemptions by notifications and not by bringing them into the Act itself There are a few documents of this character which are exempted under the provisions of the Act as it stands, but we have cut out these exemptions with the intention of including them in the list of similar instruments which have been from time to time exempted by notifications This list it is intended to print and make public as soon as possible, so that any person who has any interest in these documents will see that the removal of them from the schedule of exemptions is not to be interpreted as an intention to levy any duty upon them." (*Appx. B*)

Exemption from duty

The foregoing observations of the Hon'ble Member indicate generally the principal changes effected by the Act of 1899 A more detailed summary is to be found in the Statement of Objects and Reasons which was simultaneously published, on the 15th October 1897. (*Appx C*).

The Select Committee to whom the Bill was next referred introduced a large number of amendments These will be found in their Report. (*Appx. C*).

On the 21st March, 1898, the Hon'ble Member in charge of the Bill proceeded *to explain the more important of* these changes. "The first of these cases is that of acknowledgment. Acknowledgments of debt have, under the existing law, to bear a very small stamp, namely, one anna. Now these acknowledgments customarily go very far beyond the intention of the one anna duty. As long as a person uses an acknowledgment for the pure purpose of acknowldging a sum due by him, we did not wis to alter the incidence of taxation upon the transaction.

Acknowledgment of a debt.

should in such a case be refunded We have therefore amended the existing Indian law in this respect so as to bring it into conformity with the English law

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the present fixed fee the maximum duty, but giving to the smaller transactions the benefit of a smaller duty when the amount involved is that which is appropriate to a smaller duty.

Partition.

"In the case of partitions we have had to make a somewhat peculiar provision. In the Bill as it was first introduced, the duty payable in respect of partition was a duty levied in respect of the value of the whole property partitioned, but at the same time authority was given to the Revenue officer or the Court under whose direction the partition was carried out to relieve from its share of the duty that portion of the property which remained outside the partition, or continued to be held undivided. Well, in this instance the duty is beyond doubt a rather heavy one in the case of the separation of only a small share of a very large estate, and we have assumed, therefore, that the duty should be remitted on the principle under which under section 29 of the Bill we have given authority to the Revenue-officer or the Civil Court to remit it, and we have, therefore, levied the duty not upon the whole of the property, but only upon that part of it which is separated off. The result of the existing law would be that if several partners, holding a 12 anna share agreed to let a 4-anna partner separate off his share, they would have to pay upon the value of the whole 16 annas. If afterwards the 12-anna share again had to be partitioned, that 12 anna share would again have to pay upon the whole of the value of it. By arranging that the duty shall be only levied upon that part of the estate which is partitioned off from the rest, we prevent that which seems to be an injustice, namely, the demand of duty in respect of both the partitioned and of the unpartitioned portion of the estate. Although we levy duty only in respect of the value of the separated off portion of the estate, it must be remembered that the duty as a whole is a burden upon the whole estate, so that the partners who remain undivided have got to bear their share, although the share they bear is a much smaller one than they have to bear under the existing law.

Perpetual lease.

"Some remonstrances have been made regarding our provision of duty upon perpetual leases being based upon the duty due upon a conveyance. The Select Committee have not seen sufficient reason to depart from the proposals originally made

Revocation of Settlements and Trusts

"I mentioned just now a case of duty on re-insurance being reduced from one rupee to 'one rupee or such smaller sum as may be due in respect of the original insurance' We have adopted the same principle in respect of two or three other articles of the schedule, such, for example, as the revocation of a settlement, the revocation of trusts and transactions with regard to trust-property. In these cases the duty levied is a fixed one, and being a fixed one it is sometimes a larger duty than that which is levied upon the instrument of which revocation is made, or upon a conveyance of trust-property which is not a conveyance between trustees. In these three cases and in one or two others, we have adopted the same principle of making

as B is concerned, enabled him to dispose of the property to the same extent as if he were the owner of it We therefore provided that if a power of attorney was given for a consideration, and gave authority for the sale of the property affected, the duty should be levied in the same way as upon a conveyance In the objections that have been made to this provision apparently some persons have thought that we levy this duty upon a power-of-attorney given for effecting a sale, and they fail to observe that it was levied purely upon a power of attorney given for a consideration

"So an objection has been made in respect of our levying a duty upon a deed of adoption It has been pointed out that adoption is a religious ceremony, and under these circumstances it ought to be free from any duty We perfectly admit it, but what I desire to point out is that we do not in any way levy a duty upon adoption So far as adoption is a religious ceremony it goes free, naturally and inevitably, but if a deed of adoption is drawn up which is a conveyance of property, and is to be used as a document of title to property, it is then, and then only, that the duty is levied, not upon the adoption but upon the deed which records it, and which is meant to be effective as an instrument creating a right to property

Deed of adoption.

"We have had from one or two different quarters some objections raised to what is really a commercial practice independent of the Stamp Act, that is to say, the system of transferring debentures and shares by blank transfer deeds When a person transfers debentures or shares by a deed, a duty amounting to a certain percentage of the consideration is levied upon this deed The practice, however, is that the deed is filled up blank and passes with the shares or with the certificate of the shares from hand to hand until occasion arises to make use of it, and then the person in whose hands at the time the certificate happens to be, fills up the transfer deed in his own favour, and the transfer deed then becomes effectual It may thus cover a very large number of transfers Some objections are made to this kind of transfer, but they are objections which lie outside the purview of the Stamp Act In the first place, Companies make objection to the practice on the ground that if the certificate of the shares is in this manner passing from hand to hand, they do not know who their shareholders are, and they therefore

Blank transfer-deeds

in this respect. A perpetual lease is practically a permanent transfer of the property affected, and if a person takes a perpetual lease and agrees to pay, say, Rs 1,000 a year in respect of his perpetual lease, he is having property conveyed to him subject to the payment of Rs 1,000 a year. We must take for granted that he is prepared to pay Rs 1,000 a year as the value of the property. He is afflicted with no greater hardship in respect to the payment for duty than if he had paid a lump sum of, say, Rs 10,000—ten years' purchase. The duty proposed has been levied upon this principle. A consideration, if it is a consideration of Rs 1,000 a year, is equal to a consideration of, say, ten years' purchase or Rs 10,000, and we levied the duty just as if the transaction was that of a conveyance of property for Rs 10,000. A great part of the objections which have been raised to this demand have been raised on what seems to me a false principle. When property is conveyed from A to B, we levy duty at a certain percentage upon the total amount of the consideration paid. We do not regard in the least degree the question of how much profit B or A is to make out of the transaction. It is possible that the property may not be worth Rs 10,000, although B consents to purchase it for Rs 10,000. It may be possible that after he has purchased the property he will find that he is worse off than he was before; his money perhaps was more profitably invested before he spent it in this way. Such questions lie outside the question of the duty to be paid upon an instrument of conveyance, and in a similar manner, the question of the profit B expects to make out of his perpetual lease seems to me to lie outside the question of the consideration that is to be paid in respect of a perpetual lease.

Power-of-attorney to sell property

"There have been one or two points on which the remarks which we have received indicate some misapprehension of the intention of the Bill. For example, the Bill introduced contained a provision which levied upon a power-of-attorney in certain cases the same duty that would be levied upon a conveyance. The reason of this was that it was found as a fact that what amounted to a conveyance was sometimes effected by means of a power-of-attorney. A in selling B property, instead of conveying it to him by a regular deed of conveyance, simply transferred it to him without any conveyance at all, but gave him a power-of-attorney authorising him to sell the property. This, so far

desire that this practice of transfer by blank transfer deed should cease, and that we should impose a limit of time upon such deeds and compel a transfer deed to be executed within a certain time and the transfer to be thus completed Some persons have raised questions of revenue with regard to this, and pointed out that it would be desirable even in the interests of the revenue to reduce the duty upon a transfer deed but to limit its operation in point of time, so that it might cover not a dozen or even 50 or 100 transfers, but only cover one The practice, however, of transfer by blank transfer deed is a common one both in England and in this country, and it does not seem to us possible as a matter of regulation of stamp duty to interfere with it We have therefore not made any alteration in the levy of duty upon this class of document, but I intend to make a reference to the Chamber of Commerce and to other commercial bodies in order to find out whether they desire that any legislative provision should be made either in the Stamp Act or in any other way which would have the effect of altering the practice in respect of transfer deeds In the meantime as I say we shall not interfere with it

Transfer subject to encumbrance

"Another important point which the Select Committee considered was the question of duty to be levied in the case of a sale of property subject to an encumbrance There have been inconsistent decisions of the High Court in this respect. In some cases they have said that the encumbrance forms a deduction from the value of the property In other cases they pointed out, what I think was the original intention of the Act, that if a person bought a property subject to an encumbrance, the consideration he paid for it was not merely the amount he paid down now, but included the amount which he undertook to pay down afterwards for the release of the encumbrance. We have made this point clearer We have made it clear that the consideration in respect of which duty is levied when a property of this sort is transferred includes not only the amount which is immediately paid, but the amount which is afterwards to be paid before the property completely passes into the hands of the transferee

Transfer to mortgagee

"There is only one case in which this arrangement may seem unfair, and that case we provide for by a proviso, namely the case where the mortgagee himself buys the property from the

mortgagor In this case the first transaction of mortgage is really part of the final transaction of transfer, and therefore we have provided that in this particular case the duty which would be levied when the property is completely conveyed from the mortgagor to the mortgagee shall be reduced by the amount which has been paid in respect of the first transaction, the first transaction being taken as really a part payment

Collector's certificate

"There is one important change we have made which is greatly, I think, to the benefit of the public, and that is that in various cases in which under the law the Collector gives a certificate that the duty is sufficient, that certificate shall not afterwards be questioned in any Court It seems to us that if a document passes muster formally with the revenue authorities, it should be considered to be properly stamped even though some subsequent revenue-authority or a Court subsequently dealing with the same matter may think that the first decision is erroneous It is only fair that when a person has taken all the trouble to have the duty upon the instrument certified by an authority representing the revenue, he should be secured from any further contention that the document has not been properly stamped

Improper description of Stamp

"Section 37 was a new section which we introduced, of which the object was to give the Governor-General in Council power to lay down provisions for properly stamping a document which had been properly stamped so far as regards the amount, but not properly stamped so far as regards the class of stamp used. The section has been remarked on by several officers who have pointed out to us that it is extremely vague in its purport. It was vague in its purport, but it was vague out of deliberate intention. It was merely an enabling section which laid down no substantive law whatever, but only authorised the Governor-General in Council to provide for certain cases by a new rule. We have made this clearer in the form of wording that we have now given to the section, and if it is borne in mind that it merely enables the Governor-General in Council to make a rule, and lays down no rule or system by itself, it will be seen that it is not liable to the objections which have been made to it.

Spoiled stamp

"In another small matter, perhaps, but one that appears not unfrequently to arise, we have made provision which will give some facilities to people who have the misfortune to draw up documents on insufficiently stamped paper. It is not clear

in the law as it at present stands whether it is open to a person who under these circumstances has an entirely new document drawn up upon new paper sufficient in value, to get a refund of the old paper The practice in two or three provinces is in this respect different, but we have made it clear that a person who throws aside an insufficiently stamped deed, and gets a new deed in the same terms drawn up and properly stamped is entitled to get a refund made to him of the duty which he first of all paid upon the insufficiently stamped, and now superseded, deed

Transfer by delivery

" Some of the revenue officers have in their remarks to us made objections to a class of transactions which not unfrequently take place, and which they apparently think is a fraud on the revenue It is, namely, that of a conveyance of a large property which consists both of moveable and immoveable property: a conveyance for example of a tea estate with all the machinery-houses, furniture and various other properties connected with it The usual form of a conveyance of that kind is to recite that the moveable property has been transferred, and the immoveable property alone is made the subject of the deed This is considered by some to be a fraud upon the revenue, because they tell us the document is effective for the transfer of both the moveable and the immoveable part of the property We do not take that view It seems to us that moveable property can be transferred by delivery, and it is not necessary that it should be transferred by a deed which has to be preserved in the same way as a document of transfer of immoveable property We have, therefore, not seen our way to make any provision in this respect, and we consider that a document of that sort pays its proper duty if it is regarded purely as a document creating a right in the immoveable part of the property, and that it is not necessary to further tax it in respect of its reciting that the moveable part of the property, furniture and so forth which happens to go with the estate has already been delivered "

" No immediate steps were taken in regard to the Bill and it came before the Council again on the 20th of January 1899, at the point at which the Council had left it on the 21st of March 1898 At this subsequent meeting of the Council some further amendments were introduced by the same Member in the following terms —" I have some amendments to propose in the Bill as it at present stands. There are two scales of duty which

provided by the Act One is a scale which refers to transfers, such as gifts or conveyances, and may be described as a one per cent scale, the other is a scale which represents such documents as bonds and security bonds, and that is a half per cent. scale. The article in the schedule of stamps provides that to 'settlements' shall be applied this lower scale of half per cent. A settlement is a kind of transfer, and any document which does not come within the definition of 'settlement,' being a conveyance or a gift of some kind, will necessarily have applied to it the one per cent and not the half per cent scale. So that, if our definition of the word 'settlement,' is so set out that any particular document is excluded thereby from it, it will necessarily have to be stamped with the one per cent duty instead of the half per cent Now in the Madras Presidency it has been ruled that the used of the word 'distribution' in the definition of 'settlement' indicates that a settlement must necessarily be in favour of more than one person It has consequently been ruled in that Presidency that if a settlement is made in favour of one person it is not a settlement within the meaning of the Act and must bear a one per cent. duty instead of the half per cent which is levied for a settlement in the schedule We propose to alter the definition of the word 'settlement' so as to prevent the exclusion from it of what is not an infrequent document—a settlement in favour of a single person We have added, therefore, to the original definition of the word 'settlement' as it is taken from the old Act the following words—'or for the purpose of providing for some person, dependent on him.' A 'person' of course includes also persons, and the consequence is that a settlement is made to include not only a document which has for its object the distribution of the property of the settlor, but of providing, whether by distribution or otherwise, for some person dependent on him.

Settlement

"As to the stamp which is required on a certificate of sale given by a Civil or Revenue Court or Collector or other Revenue officer. A single property is at such a sale sometimes put up in separate lots. The consequence is that the words inserted by the Select Committee for the purpose of defining the stamp duty required, namely, the words 'in respect of each property sold,' are not quite clear. What the Select Com

Certificate of sale

in the law as it at present stands whether it is open to a person who under these circumstances has an entirely new document drawn up upon new paper sufficient in value, to get a refund of the old paper. The practice in two or three provinces is in this respect different, but we have made it clear that a person who throws aside an insufficiently stamped deed, and gets a new deed in the same terms drawn up and properly stamped is entitled to get a refund made to him of the duty which he first of all paid upon the insufficiently stamped, and now superseded, deed.

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"No immediate steps were taken in regard to the Bill and it came before the Council again on the 20th of January 1899, at the point at which the Council had left it on the 21st of March 1898. At this subsequent meeting of the Council some further amendments were introduced by the same Member in the following terms—"I have some amendments to propose in the Bill as it at present stands. There are two scales of duty which are

provided by the Act. One is a scale which refers to transfers, such as gifts or conveyances, and may be described as a one per cent scale; the other is a scale which represents such documents as bonds and security bonds, and that is a half per cent. scale The article in the schedule of stamps provides that to 'settlements' shall be applied this lower scale of half per cent A settlement is a kind of transfer, and any document which does not come within the definition of 'settlement,' being a conveyance or a gift of some kind, will necessarily have applied to it the one per cent and not the half per cent scale So that, if our definition of the word 'settlement,' is so set out that any particular document is excluded thereby from it, it will necessarily have to be stamped with the one per cent duty instead of the half per cent Now in the Madras Presidency it has been ruled that the used of the word 'distribution' in the definition of 'settlement indicates that a settlement must necessarily be in favour of more than one person It has consequently been ruled in that Presidency that if a settlement is made in favour of one person it is not a settlement within the meaning of the Act and must bear a one per cent. duty instead of the half per cent which is levied for a settlement in the schedule We propose to alter the definition of the word 'settlement' so as to prevent the exclusion from it of what is not an infrequent document—a settlement in favour of a single person. We have added, therefore, to the original definition of the word 'settlement' as it is taken from the old Act the following words—'or for the purpose of providing for some person, dependent on him' A 'person' of course includes also persons, and the consequence is that a settlement is made to include not only a document which has for its object the distribution of the property of the settlor, but of providing, whether by distribution or otherwise, for some person dependent on him.

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"As to the stamp which is required on a certificate of sale given by a Civil or Revenue Court or Collector or other Revenue officer. A single property is at such a sale sometimes put up in separate lots The consequence is that the words inserted by the Select Committee for the purpose of defining the stamp-duty required, namely, the words 'in respect of each property sold,' are not quite clear. What the Select Com

Certificate sale

mittee intended was that they should regard each property separately put up as a subject for duty, and that the duty required should be levied 'in respect of each property put up as a separate lot and sold' The insertion of these words will make the definition intended by the Select Committee clearer.

Gifts and transfers without consideration

"At present 'gift' comes under the one per cent. scale of duty, the same duty as is required in respect of a conveyance, but in order to prevent so high a duty being levied on a certain class of transactions which is liable to very frequent transfer, such, for example, as shares in a public company, or debentures issued by a public company, the words were inserted, a gift 'not being a settlement (which comes under the half per cent duty) or a will (upon which no duty at all is required) or a transfer of shares' (upon which a smaller duty is required), but if reference be made to the article referring to the duty which is levied upon transfers, it will be seen that there are other things besides transfers of shares which are entitled to this smaller rate of duty We, therefore, in order to prevent the application of the duty required upon a gift to the case of those other transactions, cut out the words 'of shares,' and merely say the higher duty is required upon an instrument of gift 'not being a settlement or gift or transfer,' without limiting this last expression to transfer of shares

Partition on an award

"It is stated that an instrument of partition includes an award or an order of the Court directing a partition. The object of this inclusion in the term 'instrument of partition on an award' was that it was found that as a matter of fact co-sharers proceeding to a partition of their property, instead of drawing up a partition deed and having it duly stamped, agreed to an award of partition being made, and the award of partition was stamped with the small stamp required for an award and not with that required for an instrument of partition. But it is very clear that if persons have an award of partition made and afterwards have an instrument of partition drawn up to carry out this award, they ought not to be made to pay duty twice over.

Agreement to lease

"There are similar provisions in the case of leases. A lease is defined to include an agreement to lease, but it is carefully provided that if the persons who execute an agreement to lease and put upon it the stamp duty which is required for

a lease, afterwards carry out the formal documents which complete that lease, they shall not pay the duty twice over, but shall pay upon the second instrument a mere duty of eight annas We have applied this same kind of proviso to the case in which an award or decree of partition having been first properly stamped, afterwards an instrument of partition is drawn up in order to carry out the partition

Power of-attorney to register

"A specially small duty is levied upon powers of-attorney which are executed for the sole purpose of effecting registration. The Registration Act provides that persons who proceed to the registering officer for the purpose of registration may under the *cognizance of the registering officer effect certain* other operations at the same time They may, for example, pass the consideration money and have the fact attested by the registering officer There is also a provision in the Registration Act which provides for the delivery of the documents to the registering person or to any oth person to whom it has to be delivered in the presence of e registering officer Now, if a person is authorised by a power-of attorney to carry out the whole of these operations, it is a little doubtful whether the instrument which is so drawn up comes within the definition of a power-of-attorney 'executed for the *sole* purpose of procuring registration of one or more documents in relation to a single transaction' We, therefore, propose in order to remove these doubts to indicate that the documents bearing this smaller stamp may cover the whole of the transaction which takes place before the registering officer, by saying that the word 'registration' shall include every oper tion incidental to registration under the Indian Registration Act

Proxy to vote at an election.

"A proxy is, of course, a power-of-attorney, and, unless we had a particular provision r lating to it, it would have to be stamped as a power-of attorney, but in order to provide for documents so frequently used for wh t may be called a mere incidental purpose, we have prescribed certain cases where a proxy may be used instead of a power-of-attorney and on which is paid a stamp-duty of one anna instead of eight annas or a rupee, which would be required if it was called a power-of-attorney.

Agreement to make a settlement

"A proviso is to be added exactly the same as in 'partitions,' as follows —'Provided that, where an agreement to settle is stamped with the stamp required for an instrument of

The changes effected by this Act are (1) the introduction of a new section (23A) providing for loans made upon the deposit of marketable securities, along with a definition of that term · (2) the amendment of the definition of the term 'settlement' [s. 2 (23)] so as to include instruments recording declarations of trust and thereby prevent the evasion of duty. (3) the restriction of equitable mortgages (Art 6) to transactions of pawn or pledge (though this was afterwards modified by notification, No 5614, 6th October 1905) (4) the reduction of the duty on mortgages of crops (Art 41) previously effected by notification (No 206, 16th January 1903.)

The next Amending Act was Act V of 1906 The object of this measure was (1) to reduce the duty on Policies of Fire-insurance (Art 47 B), and (2) to legalise a practice of dividing the Stamp-duty on Marine insurance policies when issued in duplicate (Art. 47A) The Bill was passed on the 21st March, 1906

Act V, 1906

The next Amending Act was Act VI of 1910 It effected a substantial increase in the Stamp duties on various mercantile instruments It was introduced on the 25th February 1910, and was a purely fiscal measure The duties were raised on Bills of exchange, Promissory Notes, Agreements for the sale of securities, Debentures, Transfer of shares, and Share-warrants. To these the Select Committee added Brokers' Notes. The Bill was passed on the 4th March, 1910

Act VI, 1910.

The next Amending Act was Act I of 1912 The Bill was introduced on the 22nd September 1911, with the object of effecting a better adjustment of the duties chargeable on Bills of Exchange under Art. 13 (*b*) The same ratio of increment was applied to Bills below Rs 1,000 in value as prevailed above it. The Select Committee rectified an omission by introducing an intermediate grade of Bills ranging from Rs. 800 to Rs. 1,000 in value Another amendment was the rectification of a typographical error in s 23A, rendered necessary by the change effected in Art. 5 by Act. VI of 1910. Act I of 1912 operates from 1st March, 1912

Act, I, 1912

To these must be added an amendment, of purely local interest, introduced by the Calcutta Improvement Act (Ben Act V of 1911, s. 82), affecting immoveable property situated within the town of Calcutta. For the purposes of that Act the duty on instruments of 'sale,' 'gift,' or usufructuary 'mortgage,' of such property is enhanced by 2 per cent.

settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas' Its object is to prevent a double levy of duty upon what is practically a single transaction

Transfer with or without consideration.

"The smaller duty levied upon a transfer of a certain description is equally applicable whether the transfer is made with or without consideration If it were not for this explanation it might be considered that a transfer without consideration was a gift and had to bear the full one per cent duty

Transfer of a lease.

"The provision as it stands at present is that no duty whatever is required in the case of the transfer of a lease which is exempt from duty I am advised by the Legislative Department that the meaning of these words would be that the document exempted was a transfer of a lease which is by the provisions of this law itself exempt from duty We wish to extend this a bit, especially as there is a very large class of leases which are exempted from duty by executive notification, but are not exempted by the law itself, namely, agricultural leases We, therefore, omit the words 'which is,' and the result of that omission is that the exemption from duty extends not only to transfers of leases, which are by law exempt from duty, but also to transfers of leases which may by executive notification be exempted from duty"

The Stamp Bill as amended was finally passed on the 27th of January 1899 The numerous changes which have been introduced have been pointed out in the notes to the sections and articles of the Act

THE AMENDING ACTS

Act XV, 1904

During the period that has elapsed since the Indian Stamp Act of 1899 came into force it has been amended four times The first of the Amending Acts was Act XV of 1904, and its purpose, as appears from the Statement of Objects and Reasons, (*Appx. C*) was to remove certain 'doubts, defects and anomalies' which had been brought to light in the interval. The main provisions of the Act relate to the better adjustment of the Stamp-duty leviable on equitable mortgages and mining leases. The Bill was referred to a Select Committee on the 9th September, who submitted their report on the 20th October, with some additional amendments, and it was finally passed as modified.

THE
INDIAN STAMP ACT,
1899.

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ALLOWANCES FOR STAMPS IN CERTAIN CASES

CHAPTER VI

REFERENCE AND REVISION.

THE

INDIAN STAMP ACT,

II OF 1899.

AS AMENDED BY ACTS XV OF 1904, V OF 1906, VI OF 1910, AND I OF 1912

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

An Act to consolidate and amend the law relating to Stamps.

WHEREAS it is expedient to consolidate and amend the law relating to Stamps, it is hereby enacted as follows —

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement

1 (1) This Act may be called the Indian Stamp Act, 1899.

(2) It extends to the whole of British India, inclusive of (Upper Burma) British Baluchistan, the Santhal Parganas and the Pargana of Spiti, and

(3) It shall come into force on the first day of July 1899.

Note.

Cf. Act I, 1879, sec. 1 Cf also 54 & 55 Vic. c. 39; and 33 & 34 Vic. c. 97.

"*Consolidate and amend the law*"—See Introduction

Sub Sec. (2)—'British India' means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India, or through any Governor or other officer subordinate to the Governor-General of India: General Clauses Act (X of 1897), sec. 3 (7)

But, for the operation of the General Acts, the term 'I India' probably comprises all but the 'Scheduled Districts' (Ac of 1874, Sch. 1), and to such areas the Act would have to be sp extended, with or without modifications (ss 5, 5A)

Special mention of Upper Burma is unnecessary in an passed after Act XIII of 1898 (Burma Laws)

Act I of 1879 was extended to Mysore from *22nd May*, (No 99 I. J) and continued in force as modified for that pr until *1st April*, 1881, when the administration was transferred Maharaja of Mysore, after which it was continued subject necessary alterations consequent on the change of government u repeal It was formally extended, with modifications, to the Ci Military Stations of Bangalore (which were not transferred wi rest of Mysore) on the *7th Aug*, 1883 (No 2252 J)

It was extended with modifications to the Hyderabad Ass Districts from *1st June*, 1879 (No 114 I J, *4th June*, 1879 the Hyderabad Residency Bazars from *1st Oct*, 1879 (No 8, *Aug*, 1879), to the Cantonment of Secunderabad on *4th June*, (No 119 I J)

It was extended to the Districts of Hazaribagh, Lohard Manbhoom, and the Pargana of Dhalbhoom in the District of bhoom, in the Chota Nagpur Division (Nos 1395, 1396, 1397 1398) on *21st Oct*, 1881, to the Santhal Parganas from *21st* 1886 (Reg III of 1886), to Upper Burma from *29th Nov*, (Act XX of 1886, s 6), but not so as to apply to instruments exe before that date, and not duly stamped (Burma Reg X of 1887 British Baluchistan from *19th Apr*, 1890 (Reg I of 1890) exce to the consequences of instruments not being duly stamped (s No 1260, *26th Mar*, 1890), and to the sub-division of Ang Orissa from *1st Feb*, 1894 (Reg I of 1894)

It ceased to be in force in the Naga Hills District, the Dibru, Frontier Tract, and in the North Cachar Hills, from *6th May*, (*Assam* Nos. 26, 27, 28, *6th May*, 1884), in the Khasi and Ja Hills District and in the Garo Hills, from *19th Nov*, 1884 (N *19th Nov* 1884), and in the Mikir Hill Tract in the Nowg District, from *28th Nov*, 1884 (No 86, *28th Nov*, 1884) It again extended to these places on the *13th Sep*, 1897 (No 99 *13th Sep*, 1897)

Act II of 1899 has been declared to be in force in the division of Angul by notification (under Reg I of 1894, s. 5) f 8th Aug 1897.

The present Act has also been extended by the Governor-Gen in Council, by virtue of his powers under Act XXI of 1879, ss 4 with modifications to the Civil and Military Station of Bangal from *1st July*, 1899 (No 1159 I. A, *5th May*, 1899)

It was withdrawn (No 81, *Appx. B*), and again extended thereto (No. 732D) on *19th May*. 1913

It has also been extended with modifications to the Cantonments of Mhow, Nimuch, Nowgong and Sehore, the Indore Residency Bazars, and the Civil Lines of Nowgong (No 2365 I B, *14th Nov.*, 1912).

It has likewise been extended, with modifications, to the Cantonment of Baroda (No 162 I B, *28th Jan.*, 1913). See also No. 81 Sch, *Appx B*, *post*

It was similarly extended, with modifications, to the Hyderabad Assigned Districts (Berars), the Hyderabad Residency Bazars, the cantonment of Secunderabad, the Hyderabad Contingent Stations of Aurangabad, Bolarum, Hingoli, Jalna, Mominabad, and Raichur and to the Railway lands in the territories of the Nizam of Hyderabad other than the Railway lands referred to in No 4564—I, *18th Nov*, 1891 so far as it may be applicable, from *1st July*, 1899, (No 1632 I B, *16th June*, 1899) But see No 81, Sch, *Appx B*.

The four Contingent Stations of Hingoli, Jalna, Mominabad and Raichur having been transferred to the Hyderabad State on the *20th April*, 1903, the Act was re-extended to the abovenamed places, with modifications, excluding the four Stations, on the *4th Feb*, 1904 (Nos 530, 531 I B)

It has been extended to all administered Areas in the Hyderabad State (No 582, I B, *31st March*, 1913)

It has also been extended to the lands occupied, or which may hereafter be occupied, by the Hyderabad Godavari Valley Railway (No 3382 I B, *13th Nov*, 1899)

It has been similarly extended to the lands occupied by (1) Bombay, Baroda and Central India, (2) Bhavnagar, (3) Dhrangadhra, (4) Gondal Porbander, (5) Jamnagar, (6) Jetalsar Rajkot, (7) Jungarh and (8) Morvi Railways, so far as its provisions may be suitable and as may be amended from time to time by subsequent enactments (No. 781 I B, *9th April*, 1913)

It has likewise been extended, with modifications to the "Rajputana and Central India Railway Lands" (No. 262 I. B, *10th Feb*, 1913).

It has been also extended to the "Railway Lands" occupied by the (1) Rajputana-Malwa, (2) Jodhpur-Bikaneer, (3) Kalka Simla, (4) Ludhiana Dhuri, (5) Rajpura Bhatinda, (6) Southern Punjab Railways (No 517 I. B, *17th Mar* 1913)

It has likewise been extended to the Abu Area (No [illegible] I B, *2nd April*, 1913)

It has been similarly extended to the territories administered by the Agent to the Governor-General in Baluchistan, with power to the

Courts to construe its provisions with such alterations not affec the substance as may be necessary or proper (No 1565 (A) E *11th Oct*, 1899)

It was extended to the districts of the Garo Hills, the Khasi Jaintia Hills, the Naga Hills, the North Cachar sub-division of Cachar district, the Mikir Hills Tract, and the Dibrugarh Fro Tract, except as to natives assessed to house tax instead of revenue (No 503 J, *19th Feb*, 1903)

It ceased to be in force in the Lushai Hills, from *8th Jan*, (No 75 J,) but was again extended to them, except as to nat who were not specially included, from *12th Nov*, 1904 (No 49)

It has been re enacted by the Mysore State for the whol Mysore from the *1st July*, 1900, and is in force in that State as Mysore Stamp Regulation (11 of 1903)

It does not extend to the Hill District of Arakan in Burma has it ever done so (Reg 11 of 1901)

In British Baluchistan, the provisions relating to the co quences of instruments not being duly stamped do not apply to th which were executed before the 19th April, 1890 (Reg II of 1913, s

Sub Sec. (3)—The "commencement of this Act" hereafter ferred to (ss 2 (6), 26) means the day on which it came into fo General Clauses Act (X of 1897), sec 3 (12)

2 In this Act, unless there is something repugn

Definitions — to the subject or context—

Note.

"*In this Act* —" The Stamp Act in India ought to be constr according to the same principles of construction as the Stamp Act England and the earlier Stamp Acts in this country", *per* Wilson, *Kumen Chetty v Mahomed* ... (10 Cal p 435) See also ur sec 33, *post*

(1) "banker" includes a bank and any person acti

"Banker." — as a banker

Note.

Cf Act I of 1879, sec 3 (1) Cf also 54 & 55 Vic, C. 39, s. and 33 & 34 Vic C 37, s 45

"*Includes*"—The word "includes" has an extending force, a does not limit the meaning of the term to the substance of the defi tion: *In the matter of Nicholson* (8 Cal p. 536).

"*Banker*"—A "banker" is one who receives money in trust to drawn again as the owner has occasion for it A "bank" is a pla where money is deposited for the purpose of being let out to interes

returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it Wharton

"Banker" includes also persons or a corporation or company acting as bankers Negotiable Instruments (Act XXVI of 1881), sec. 3

"The customer lends money to the banker, and the banker promises to repay that money, and whilst indebted to pay the whole or any part of the debt to any person to whom his creditor, the customer, in the ordinary way requires him to pay it" *per* Alderson, B, *Roberts* v *Tucker* (16 Q B p 575)

"The relation between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques so long as there are any assets of his in the banker's hands" *per* Martin, B, *Garnett* v *M'Kewan* (L. R 8 Ex 13 See also *per* Pollock, C B, *Pott* v *Clegg* (16 M & W p 326), *Foley* v *Hill* (2 H L Cas 28)

But a mere arrangement to lend money to a trader as required to pay his debts would not constitute the lender a banker, nor could *chits* addressed to such a person by the trader and given to his creditors from time to time for payment of sums of money be regarded as cheques on which duty was chargeable *Ratanchand* v. *Vrijbhukhan* (17 Bom 684)

"*Any person*"—This includes any company or association or body of individuals, whether incorporated or not General Clauses Act (X of 1897), sec 3 (39)

"Bill-of-exchange."

(2) "Bill-of-exchange" means a bill-of-exchange as defined by the Negotiable Instruments Act, 1881, and includes also a *hundi*, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any person for, any sum of money

"*Any person*"— See *ante*

"*As defined by the Negotiable Instruments Act*"—A 'bill of exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only, to, or to the order of, a certain person or to the bearer of the instrument A promise or order to pay is not 'conditional' within the meaning of this section by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event, which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain, The sum payable may be 'certain' within the meaning of this section, although it includes future interest or is payable at an indicated rate of exchange or is according to the course of exchange, and although the instrument provides that on default of payment of an instalment the balance unpaid shall become due The person to whom it is clear that the direction is given or that payment is to be made, may be a 'certain person' within the meaning of this section, although he is mis named or designated by description only Negotiable Instruments Act (XXVI of 1881), s 5

A bill of exchange is a *written order or request* by one person to another for the *payment of money at a specified time absolutely and at all events* Byley, 'Bills

"A bill of exchange is only a transfer of a *chose-in action* according to the custom of merchants, it is an authority to one person to pay to another the sum which is due to the first" *per* Grose, J, *Mead* v *Young* (4 T R. 32)

The chief features of a bill of exchange, which distinguish it from other instruments, are (1) its negotiability or quality of assignment which is inherent in all bills made payable to C. D. or 'bearer,' or to order of the payee, in the former of which cases it will pass like a bank note by *delivery*, whilst in the latter it requires the *endorsement* of the payee to make it negotiable ; (2) that a consideration for the bill will be presumed until the contrary appear ; (3) that it must be for payment of *money* ; (4) that the payment must be *unconditional or absolute* See Smith's 'Mercantile Law' (11th Ed) pp 243—304

Form of an English bill-of-exchange.

London, 1st *June*, 1908

[Three] months after date [*or*, on demand, *or*, at sight, *or*, at ten days after sight], pay C. D., or order [*or*, bearer], [*or*, pay to my order] one hundred pounds.

To Mr. E F., Merchant of—

A. B.

In this case A B is called the drawer, E F the drawee, and C D. the payee ' Broom, 'Common Law (10th Ed), p 805

"*Includes a Hundi*"—For a description of this instrument with its numerous varieties, see Chalmers 'Negotiable Instruments Act' (3rd Ed), pp 25—32

"*Any other document*" &c.—The latter portion of this definition which is borrowed directly from the English Stamp Acts of 1870 and 1891, obviously embraces a large class of instruments which are not strictly bills of exchange In reviewing the provisions of sec 48 of the English Stamp Act of 1870, which are almost identical, Jessel, M R, expressed the opinion that that section could never have been intended to include every document coming literally within the meaning of the words used If that were so, almost every kind of written document would be included as a bill of exchange, and great injustice and confusion would arise, as they could not be stamped subsequently and would be altogether void It was quite plain, therefore, that the draftsman must have intended that the words used should be read with some limitation The nature of the instrument must be looked at in each case, and its precise nature ascertained. *Fisher* v. *Calvert* (27 W R 301) And see *per* Pollock, B, in *Mortgage Insurance Corporation* v *Commissioners* (under sec. 2 (22), *post*)

It may be presumed, therefore, in the light of these observations, that the terms of this definition should be read with some limitation Its real object would seem to have been to include a class of documents written in the native character but which are nevertheless not *hundis*, which have hitherto enjoyed an immunity from stamp duty.

Bills of exchange and Promissory-notes are chargeable alike: see Art 13 and Art. 49 See also sec. 2 (3), *n* and sec. 2 (22), *n*

"Bill-of-exchange payable on demand."

(3) "bill-of-exchange payable on demand" includes—

(*a*) an order for the payment of any sum of money by a bill-of-exchange or promissory-note, or for the delivery of any bill-of-exchange or promissory-note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(*b*) an order for the payment of any sum of money weekly, monthly, or at any other stated periods; and

(*c*) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the

"*Any person*"— See *ante*

"*As defined by the Negotiable Instruments Act*"—A 'bill-of exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only, to, or to the order of, a certain person or to the bearer of the instrument. A promise or order to pay is not 'conditional' within the meaning of this section by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event, which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain. The sum payable may be 'certain' within the meaning of this section, although it includes future interest or is payable at an indicated rate of exchange or is according to the course of exchange, and although the instrument provides that on default of payment of an instalment the balance unpaid shall become due. The person to whom it is clear that the direction is given or that payment is to be made, may be a 'certain person' within the meaning of this section, although he is mis-named or designated by description only. Negotiable Instruments Act XXVI of 1881, s. 5.

A bill of exchange is a *written order or request* by one person to another for the *payment of money at a specified time absolutely and at all events*. Bayley, 'Bills.'

"A bill of exchange is only a transfer of a *chose-in-action* according to the custom of merchants; it is an authority to one person to pay to another the sum which is due to the first." *per* Grose, J., *Mead* v. *Young* (4 T. R. 32)

The chief features of a bill-of-exchange, which distinguish it from other instruments, are: (1) its negotiability or quality of assignment which is inherent in all bills made payable to C. D. or 'bearer,' or to order of the payee, in the former of which cases it will pass like a bank note by *delivery*, whilst in the latter it requires the *endorsement* of the payee to make it negotiable; (2) that a consideration for the bill will be presumed until the contrary appear; (3) that it must be for payment of *money*; (4) that the payment must be *unconditional or absolute*. See Smith's 'Mercantile Law' (11th Ed.) pp. 243—304.

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[Three] months after date [*or*, on demand, *or*, at sight, *or*, at ten days after sight], pay C. D., or order [*or*, bearer], [*or*, pay to my order] one hundred pounds.

To Mr. E. F., Merchant of—

A. B.

person in whose favour it is drawn

Note.

Cf. 54 & 55 Vic, C 39, s 32, and 33 & 34 Vic, C 97, s 48

This provision is taken from the English Stamp Act, 1891, s 32, and its object is to include a number of instruments which are drawn in the native character while they are not called '*hundis*'

"*Includes*"—See sec 2 (2), *n*

"*Payable on demand*"—Where no time is specified for payment in a bill it is payable on demand Negotiable Instruments Act (XXVI of 1881), sec 19

"*Order for the payment of money*"—A banker's written order to the Bank of England to transfer a sum of money from his account with the Bank of England to the account of the Commissioners of Customs with the Bank of England, whether given by the banker to a customer in exchange for his cheque for an amount of customs duty on goods, and given by the customer to the Commissioners of Customs or given by the banker to an Officer of Customs in exchange for the customer's cheque for an amount of duty is a "bill-of-exchange payable on demand" within the meaning of s 32 of the Stamp Act, 1891 *Committee of London Clearing Bankers v. Commissioners* (L R [1896] 1 Q B 542)

A distinction is to be observed, however, between an order for the payment of money, and an assignment of a debt "An order for payment of money, though expressed to be payable out of a definite debt or fund, must be properly stamped as a bill of-exchange, and if not stamped at the time of issue, cannot be stamped afterwards But an order for payment out of a debt accruing due under a contract as for goods sold, or for work and labour or the like, is an assignment of a debt which must be stamped as a transfer of property." Leake, 'Law of Contracts' (6th Ed) p 858

Moreover, "an order for the payment of money presupposes moneys of the drawer in the hands of the party to whom the order is addressed, held on the terms of applying such moneys as directed by the order of the party entitled to them No such obligation arises out of the ordinary contract of sale. If a purchaser buys goods of a manufacturer or tradesman, he undertakes to pay the price to the seller, not to a third party . . . . assignee becomes entitled as of right to the payment" *per* Cockburn, C. J, *Buck v. Robson* (L. R. 3 Q B D p 691)

So where a letter was written as follows:—"I hereby assign to Messrs Robson & Son, boat builders, Sunderland, the sum of £40, or

chargeable with duty, the lender not being a banker *Kalulal Kanzildas v. Vrijbhukhan Parabhuram* (17 Bom 684)

"*A letter of credit*"—For stamp purposes this is to be treated as a bill payable on demand It is chargeable under Art 37.

See also s 2 (2), (22), *n* For the duty chargeable on such bills-of-exchange, see Art 13 (*a*)

"Bill-of-lading"

(4) "bill-of-lading" includes a "through bill-of-lading," but does not include a mate's receipt

Note.

Cf Act I, 1879, s 3 (3) and Act XVIII, 1869, s 3 (4) Cf also 54 & 55 Vic, C 39, s 40, and 33 & 34 Vic, C 97, s 56

"*Includes.*"—See sec 2 (2), *n*

A bill-of-lading is a written acknowledgment by the master of a vessel that he has received goods from the shipper, to be conveyed on the terms therein expressed to their destination, and to be then delivered to the parties therein designated The ordinary practice is this when goods are sent on boardship, the master or person acting for him gives a receipt for them, the master afterwards signs three or four parts of a bill-of-lading, one of which is retained by the captain, another is transmitted to the consignee, the other or others being held by the consignor himself for his own security Broom [illegible] Scrutton, 'Charter-parties' (6th Ed) p 7

"A bill of lading is the written [illegible] contract for the carriage and delivery of goods se[illegible] a certain freight. The contract in legal language is a con[illegible] In the usual form of the contract the undertaking is [illegible] order or assigns of the shipper [illegible] the delivery on b[illegible] acquires a special prop[illegible] rt that posses[illegible] n the right of another, ar[illegible] m to perform [illegible] The general property r[illegible] shipper of th[illegible] disposed of it by some [illegible] law to transf[illegible] [illegible]rsement of the bill-[illegible] y a direction [illegible]oods." *per* Lord L[illegible] C., *Lickbarr*[illegible]

A 'bill [illegible] fewer tha[illegible]

(*a*) an ackn[illegible] or receipt for,[illegible] ates,

(*b*) a contract [illegible] vner to c[illegible] ds;

(*c*) the symbo[illegible] the goods; [illegible] Laws.

"It is an a[illegible] under the [illegible] [illegible]n, that he has received su[illegible] e undertak[illegible] the person named in that [illegible] is assign. [illegible]; and by indorsement the [illegible] in the [illegible] Buller, J

Caldwell v. Ball ([illegible]

"It is a receipt for goods, stating the terms on which they were delivered to and received by the ship, and therefore excellent evidence of those terms, but it is not a contract That has been made before the bill-of-lading was given " *per* Lord Bramwell in *Sewell* v *Burdick* (L R 10 A. C p 105)

This definition has been adopted as applicable to this Act, and as covering documents which relate to the carriage of goods by inland navigation, as well as by sea going vessels *In the matter of a Reference* (30 Cal 565). But the former are now exempt from duty (No 47, *Appx. B*).

"*Includes a through bill-of-lading*"—A through 'bill-of-lading' is one made for the carriage of goods from one place to another by several shipowners or railway companies Scrutton, 'Charter-parties,' (6th Ed) p 64 For an illustration, see *Moore* v *Harris* (L R 1 A.C. 318).

"*Mate's receipt*"—On delivery of goods by a shipper to the ship-owner or his agent, the shipper will, unless there is a custom of the port to the contrary, obtain a document known as a 'mate's receipt' As a general rule, the person in possession of the mate's receipt is the person entitled to bills of lading, which should be given in exchange for that receipt. Scrutton, 'Charter-parties,' p 132

The contract of affreightment by charter party (Art. 20) is to be distinguished from the contract for conveyance of goods in a general ship which is evidenced by the instrument known as a 'bill-of-lading'. Smith, 'Mercantile Law' (11th Ed) pp 357-399

There is some doubt whether a 'bill-of-lading' properly so-called, is not confined to maritime adventures; and whether an instrument so worded given by a boat-master in a canal navigation, would operate in any way except as a receipt or memorandum. *Id.*

This matter has been settled in India by a notification exempting so-called bills-of lading issued by Inland Steamer Companies from duty see Art. 14, *n.*

For the duty on a bill-of-lading, see Art. 14.

"Bond." (5) "bond" includes—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

chargeable with duty, the lender not being a banker *Ratilal Ranchhoddas* v. *Vrijbhukhan Parabhuram* (17 Bom 684)

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Note.

Cf Act I, 1879, s 3 (3) and Act XVIII, 1869, s 3 (4) Cf. also 54 & 55 Vic, C 39, s 40, and 33 & 34 Vic, C 97, s 56

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"A bill of lading is the written evidence of a contract for the carriage and delivery of goods sent by sea for a certain freight The contract in legal language is a contract of bailment. In the usual form of the contract the undertaking is to deliver to the order or assigns of the shipper By the delivery on board, the shipmaster acquires a special property to support that possession which he holds in the right of another, and to enable him to perform his undertaking The general property remains with the shipper of the goods until he has disposed of it by some act sufficient in law to transfer property The indorsement of the bill of-lading is simply a direction of the delivery of the goods." *per* Lord Loughborough, L. C., *Lickbarrow* v. *Mason* (2 T. R. 72).

A 'bill-of lading' has no fewer than three aspects in law, *viz*, (*a*) an acknowledgment of, or receipt for, the goods to which it relates; (*b*) a contract by the shipowner to carry and deliver those goods, (*c*) the symbol of property in the goods; Encyclopædia of Laws

"It is an acknowledgment under the hand of the captain, that he has received such goods, which he undertakes to deliver to the person named in that bill-of-lading. It is assignable in its nature; and by indorsement the property is vested in the assignee:" *per* Buller, J., *Caldwell* v. *Ball* (1 T. R. p. 216).

"It is a receipt for goods, stating the terms on which they were delivered to and received by the ship, and therefore excellent evidence of those terms, but it is not a contract That has been made before the bill-of-lading was given" *per* Lord Bramwell in *Sewell* v. *Burdick* (L. R. 10 A. C. p 105)

This definition has been adopted as applicable to this Act, and as covering documents which relate to the carriage of goods by inland navigation, as well as by sea-going vessels *In the matter of a Reference* (30 Cal 565). But the former are now exempt from duty (No 47, *Appx B*)

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For the duty on a bill-of lading, see Art. 14

"Bond" (5) "bond" includes—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another ·

Note.

Cf Act I, 1879, sec 3 (4) and Act XVIII, 1869, sec 3 (5) Cf also 54 & 55 Vic c 3 39, sch 1, and 33 & 34 Vic c 97, sch

"*Includes*"—See sec 2 (2) *n* The word "includes" has been substituted for the word "means" The clause is otherwise unaltered By the Act of 1879 the definition of 'bond' was enlarged so as to include expressly [cl (*b*)] the ordinary 'khatta' or 'tamasuk' and also [cl (*c*)] instruments securing the repayment of a loan in kind

"*Any instrument*"—See sec 2 (14)

Cl. (a).—The definition of a bond in cl (*a*) is precisely what is understood by a bond in England *Osborne & Co* v *Subal Gowri* (8 Cal p 286)

A bond is an instrument under seal, whereby one person becomes bound to another for the payment of a sum of money, or for the performance of any other act or thing The person thus bound is called the 'obligor', and he to whom the bond is given the 'obligee'; and this obligation may be either by or to one or several persons Hurlstone.

A bond is the acknowledgment of a debt in writing under the hand and seal of the debtor, who is then called the 'obligor' It must be delivered to the creditor, who becomes the 'obligee' Encyclopædia of Laws

If a bond is merely for the payment of money or for the performance of some particular act, without any condition in or annexed to it, the bond is said to be single, but there is in general a condition added to the bond in the nature of a defeasance, stipulating that if the obligor duly performs the act specified, the obligation shall be null and void, otherwise that it shall remain in full force In case this condition is not performed the bond becomes forfeited Broom, 'Common Law' 10th Ed), p 668.

A bond is not the less a bond because its operation is deferred until the happening of a certain event or contingency: *Lakshmandas* v. *Rambhau* (20 Bom 791).

"*A person*"—This will include any company or association, or body of individuals, whether incorporated or not, General Clauses Act (X of 1897), s. 3 (39). It will also include a surety. *Dowlatram Harji* v. *Vitho Radhoji* (5 Bom. p 191)

Bonds and Agreements (Art. 5)—Bonds are in the nature of agreements They are, in fact, agreements of a particular form, and it is presumed that such instruments, if not falling under the above descriptions of bonds or of promissory-notes (cl. 22), would be

chargeable under Art 5 A bond under cl (c) may be regarded for the purposes of stamp duty as an agreement to give grain with attestation Without attestation the instrument would probably be considered an agreement falling under Art 5

But "an agreement to lend money does not create an obligation to pay money within the meaning of this clause" *per* Scott, C J, *Hathisandlal Cotton Mills Co* 33 Bom p 428)

Every promise and every set of promises, forming the consideration for each other, is an agreement Indian Contract Act (IX of 1872), sec 2 (e

Covenant with penalty attached—This is an agreement to perform a specified act, and in the event of non performance to pay a sum of money by way of damages whereas a bond [cl (a)] is an agreement to pay a sum of money at all events save one, *viz*, the performance of the specified act This distinction has been explained thus by Garth, C J —"The definition of a bond in sec 3 (5), Act XVIII of 1869 [sec 2 (5 cl (a)] is precisely what we understand by a bond in England, and it is an obligation of a different character from a covenant to do a particular act the breach of which must be compensated in damages Whether a penal clause is attached to such a covenant or not, the remedy for the breach of it is in form and substance an action for damages, and by sec 74, Indian Contract Act, the English rule with regard to liquidated damages is abolished, and the plaintiff in such a suit has no right under any circumstances to claim the penalty itself, as such He can only recover such compensation, not exceeding the amount of the penalty, as the Judge at the trial considers reasonable, but he is entitled to that compensation, whether he proves any actual damages or not The remedy upon a bond is very different. The plaintiff, in the case of a simple money-bond recovers the sum named in the bond, or in case of a bond conditioned for the performance of covenants, he recovers the actual damage which he can prove that he has sustained In either case, not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it, and the amount recoverable for the breach of it is also different"; *Gisborne & Co.* v. *Subal Bowri* (8 Cal 285)

So where a Collector granted to certain persons, upon certain conditions, the monopoly of manufacturing and selling spirits within a particular area, and these persons bound themselves, in the event of a breach of the conditions, to pay to the Collector a penalty of Rs. 5,000, Stuart, C. J, whose opinion has been followed in the preceding case, observed—"The presumption, according to all recognised legal principle, is that the contract, or agreement, will be performed, and that the circumstances under which this penalty may be sought to be enforced will never arise The right to recover the penalty may or may not

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another :

Note.

Cf Act I, 1879, sec 3 (4), and Act XVIII, 1869, sec 3 (5) Cf also 54 & 55 Vic c 3 39, sch 1, and 33 & 34 Vic c 97, sch

"*Includes*"—See sec 2 (2) *n* The word "includes" has been substituted for the word "means" The clause is otherwise unaltered By the Act of 1879 the definition of 'bond' was enlarged so as to include expressly [cl *(b)*] the ordinary 'khatta' or 'tamasuk' and also [cl *(c)*] instruments securing the repayment of a loan in kind

"*Any instrument*"—See sec 2 (14)

Cl. (a).—The definition of a bond in cl *(a)* is precisely what is understood by a bond in England *Gisborne & Co* v *Subal Bowri* (8 Cal p 286)

A bond is an instrument under seal, whereby one person becomes bound to another for the payment of a sum of money, or for the performance of any other act or thing The person thus bound is called the 'obligor', and he to whom the bond is given the 'obligee'; and this obligation may be either by or to one or several persons Hurlstone.

A bond is the acknowledgment of a debt in writing under the hand and seal of the debtor, who is then called the 'obligor' It must be delivered to the creditor, who becomes the 'obligee' Encyclopædia of Laws

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regarded as constituting separately an indemnity-bond on which duty could be charged. *Ref* (1 Mad 133)

A covenant contained in a lease and relating thereto must also be included, and cannot be charged separately *British Electric Traction* v *Commissioners* (L R [1902] 1 K B 441)

And where a mortgage-bond contained certain conditions, whereby the mortgagor engaged to pay to the mortgagee any costs incurred in suits brought against him, or any debts which he might pay off, it was held that these stipulations did not separately constitute an indemnity-bond *Damodar Gangadur* v *Ramanrao Lakshman* (19 Bom 435)

Bonds and Promissory notes [sec 2 (22)]—In the first place a promissory-note in its proper and legal form could not well be confounded with a bond under cl *(a)*, *i e*, a bond with a condition, for such a promissory-note must be "an unconditional undertaking;" nor could it be mistaken for a bond, under cl *(c)* to deliver grain or such like, for the subject of a promissory-note can be "money only" *Secondly*, as to single bonds falling under cl *(b)*, such bonds could not be mistaken for promissory notes executed in the ordinary form, *i.e*, payable to 'order' or to 'bearer,' which constitute their negotiability, for instruments so worded are expressly excluded by cl. *(b)*. Their negotiability consists in their being assignable, *viz*, by endorsement and delivery, when payable to 'order,' and by delivery merely, when payable to 'bearer' *Thirdly*, to distinguish between a 'bond' as described in cl *(b)* and a promissory-note which is not negotiable The language of a bond indicates an obligation, while that of a note constitutes a promise or undertaking to pay The distinction between these instruments when loosely worded is often difficult to trace

The following cases may be taken as instances —An instrument, styled therein a promissory-note, after a recital of the fact that a previous debt due under a bond, together with interest, amounted to a certain sum stated, and that this sum, added to another since borrowed, amounted to Rs 36, contained the following clause; "I, or the heirs to my estate, will fulfil this agreement" There was an undertaking to pay the said sum on demand, and also interest at a specified rate The document was, moreover, attested. It was held to be a bond. *Balkrishna Trimbak* v *Govind Pand Naik* (8 Bom. 297)

The reasons were not stated, but presumably they were, first the attestation, and, in the second place, the obligatory nature of the document

Attestation, however, of a promissory-note would not make it the less a promissory-note if it were stated to be payable to 'order' An instrument so drawn, although attested, was held to be a promissory-note It was otherwise with a document purporting to be a promissory-note which was not payable to 'order,' or 'bearer,' and attested.

In this case apparently the attestation operated to make it a bond: *Ref.* (8 Mad 87)

And so where a document was couched in these terms—"I have this day taken from you in cash Rs 48 (forty-eight). I have received this amount I shall repay this money without taking any objection when you demand it," and was also attested, the following opinion was expressed —"The document in question is attested, and is not payable to order or bearer, further the executant obliges himself to pay the amount to another It is therefore a bond within the meaning of cl (*b*)" *Venku* v *Sitaram* (29 Bom. 82)

An instrument contained an unconditional promise to pay on demand a sum of Rs 16 It was not made 'payable to order or bearer,' and it bore, besides the signature of the party executing it, that of the writer, apparently as an attesting witness It was held that the document was a bond 'not being payable to bearer or order, and the signature of the obligor being attested by a witness" *Ref* (10 Mad 158)

And where an instrument set forth an obligation to pay on demand with interest a sum of Rs 10-12, and the signature of the executant was attested by three witnesses, it was similarly held to be a bond: *Ref* (13 Mad 147)

Where, however, a document contained a promise to pay the person named therein a certain sum of money on a certain date with interest, and further a statement by the writer of the document that it was correct and was written by his pen, it was held that it could not be said to be "attested by a witness" within the meaning of cl (*b*), and consequently could not be treated as a bond *Ref* (17 All 211)

For a description of promissory notes see sec 2 (22)

Cl. (c) —This is intended to include instruments securing the repayment of a loan in kind

"*Other agricultural produce.*"—Unrefined sugar (*rab*) is agricultural produce: *In the matter of Gajraj Singh* (9 All. 585)

So is cotton, and probably indigo A cotton *satta* or contract for the delivery of cotton attested by a witness would be a bond within the terms of cl (*c*), and so would an indigo *satta*, if attested, and of the same character. But these documents vary in form: (see *Ben Stamp Manual*, 1911, p 177)

Timber, it is presumed, could not be regarded as agricultural produce, see *Ref* (8 Mad 15)

By an instrument, dated the 28th Dec. 1878 (?), one Gajraj Singh undertook, in consideration of a loan of Rs. 25, half of which was paid him as earnest-money, to supply 21 maunds of *rab* (unrefined sugar)

at a rate of 9 annas a maund in excess of Katauli prices on a certain date. He moreover, undertook, in the event of his failure to supply the amount in whole or in part, to repay the sum lent, or as much of it as then remained due, together with a sum of Re 1 per maund by way of penalty. To secure the payment of these sums, he further hypothecated the produce of a field of sugarcane for one year On a reference to a Full Bench, the following opinions were delivered *per* Straight, J, "Looking to the terms of the document to which this reference relates and construing them in their ordinary legal sense, it would appear to fall within two definitions *first*, it is an agreement for the delivery of *rab* with a provision for damages in case of breach of the contract to deliver less, and next it is an hypothecation-bond of certain moveable property, to wit, the produce of a sugarcane field, as security for the payment of any damages that might become recoverable by way of compensation for 'non-delivery' But cl (c) of sec 3 [sec 2 (5)] declares that 'any instrument whereby a person obliges himself to deliver grain or other agricultural produce to another' is a bond, and if *rab* can properly be regarded as 'agricultural produce,' which I think it may, the instrument now before us exactly falls within the above definition As regards the provision in it for a penalty, I have present to my mind the Full Bench ruling reported in I L R 2 All 654, in respect of which Garth, C J, has made some remarks in *Gisborne* v *Subal Bowri*, which I may note, related to Act XVIII of 1869, where there was no provision such as that to be found in cl (c) of the present law Upon further consideration, I am disposed to doubt the correctness of the ruling of this Court to which I was a party, and to concur in the views expressed by Garth, C J, upon the subject of a penalty clause The sum named in a contract to be paid in case of breach is not necessarily recoverable *in toto*. On the contrary, it only fixes the extreme amount beyond which compensation cannot be assessed In the present case, upon failure to deliver the *rab*, the plaintiff was entitled, under the contract, to recover damages for such non delivery, but it no means followed as a matter of course that a Court would give him the full amount provided in the instrument I do not think that it was ever intended to impose stamp duty upon an item of this fluctuating character." Stuart, C J, regarded the instrument as having a double character *viz.*, *first*, as a 'bond' under cl (c), and *secondly*, as a 'mortgage deed' of the class, "when at the time of execution, possession is not given or agreed to be given by the mortgagor," and as therefore chargeable, according to the provisions of sec 6, with the duty leviable on a bond He further held that the provisions in the event of failure to deliver being all of an 'essentially penal character, and also merely contingent, as they may or may not come into operation,' were not to be taken into account in estimating the stamp-duty. Brodhurst, J. considered the document to be a "bond' under cl. (c), and also a

'mortgage-deed,' and chargeable as either, in view of sec. 6. Oldfield, J., and Tyrrell, J., considered the instrument to be a 'mortgage-deed': *In the matter of Gajraj Singh* (9 All 585)

It will be observed that the instrument which was thus adjudicated on is dated 28th Dec. 1878 If this date be correct, it is clear that the provision in sec 3 (4) (c) of Act I of 1879, was not in force at the time, and therefore could not be held to apply to it, having regard to sub-secs 5 and 10 of sec 3 of that Act, and of the rulings in *Narayanan Chetti* v *Karuppathan* (3 Mad 251) and *Ref* (5 Mad. 394). It is more probable, in view of the remarks of Straight, J, on *Gisborne* v *Subal Bowri*, that the date is wrong

In the case of a document drawn thus "We promise to repay, with interest, the sum of Rs 12-8, borrowed from you in the month of Falgoon of this year, consideration received in cash In addition to this, we promise to give nine '*pallies*' of nagli in the month of Falgoon of this year, and on failure to give it (*i e*, nagli), give *wadh*, at the rate of quarter of a maund for every maund per year," the first part was held to be a money-bond, and the second an agreement (under Act XVIII of 1869) *Chinnaji* v *Rama* (4 Bom 19).

But where by an instrument, which was attested, the obligor stated that he borrowed a certain quantity of grain from the obligee, and agreed to repay it at a future time in greater quantity, it was held, under Act I of 1879, to be a bond under cl (*c*). *Magandas Khemchand* v *Ramchandra Hiraji* (7 Bom 137).

Acknowledgment of a debt (Art 1).—Any bond may contain an acknowledgment of a debt as well as an undertaking or promise to pay, *e g*, illus (*b*) of sec 4, Act XXVI of 1881: "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received" The first clause contains a simple acknowledgment of a debt, the second would make the whole a promissory-note, and if the attestation of witnesses were added, the note would come within the description of a bond in cl (*b*).

Two documents, one of which contained the words "Rupees two hundred and three, annas two, due to you, and payable on the 15-16 July," and the other, a statement of a debt of Rs 515-10, "the full amount of which will be paid in full of this bill on 3rd-4th August," were held to be not mere acknowledgments but promissory-notes. *Manick Chund* v. *Jomoona Doss* (8 Cal. 645)

But a *khata* in the name of a debtor acknowledging the receipt of the amount advanced and bearing the signature of the writer of the *khata* was held to be a mere acknowledgment of a debt, and not a bond, there being nothing to lead to the supposition that the writer signed as an attesting witness: *Dulabh Vanmali* v. *Rehman Jamal* (14 Bom 511)

Documents which are in form acknowledgments only are not converted into bonds, by the mere fact that they contain memoranda as to the rate of interest at which the loan is made, and are attested by witnesses. No document can be a bond unless it is one which itself creates an obligation to pay money. This is not the case with acknowledgments of advances or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument but arises from the promises to repay advances, and to pay for goods which the law always implies when money is borrowed or goods are purchased. *Hira Lal Sircar* v. *Queen Empress* (22 Cal 757).

And where a *khata*, or account stated, contained no promise in writing, it was held to create no contract within the meaning of sec 25 (3) of the Indian Contract Act, but to be a mere acknowledgment in writing. *Chowksi Himutlal* v. *Chowksi Achrutlal* (8 Bom 194). *Ramji* v. *Dharma* (6 Bom 683). *Udit Upadhya* v. *Bhawani Din* (27 All 84).

But to be such it must be an acknowledgment pure and simple for if it also contains a promise to pay the debt, or any stipulation to pay interest, or to deliver any property, it is something more than an acknowledgment. see Art 1 *n*.

For the duty chargeable on a Bond see Art 15.

(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed.

"Chargeable"

Note.

Cf. Act I, 1879, sec. 3 (3), and Act XVIII, 1879, sec. 4.

"*Means*"—See sec. 2 (2), *n*.

"*British India*"—See sec. 1 (2).

"*First executed*"—See sec. 2 (12). The duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of execution of it. *Ref* (5 Mad 394).

'Chargeable' means chargeable under the Act in force at the date of execution. *Narayanan Chetti* v. *Karuppathan* (3 Mad 251).

"*Commencement of this Act*"—This means the day on which it came into force. See sec. 1 (3).

The obligation to stamp does not arise unless the conditions stated are fulfilled, until then the instrument has not become charge-

able, and sec 35 would be no bar to its admission in evidence: *Mahomed Rowthan v. Mahomed Husin* (22 Mad 337)

(7) "cheque" means a bill-of-exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Cheque"

Note.

Cf. Act I, 1879, sec 3 (6), and Act XXVI, 1881, sec 6 Cf. also Act XVIII, 1869, sec 3 (8)

"*Means*"—See sec 2 (2), n

This definition has been borrowed from the Negotiable Instruments Act (XXVI of 1881) sec 6

"*A specified banker*"—See sec 2 (1)

Mere *chits* addressed by a trader to a person who had arranged to lend him money as required, and given to the trader's creditors, from time to time, for payment of sums of money in satisfaction of his trade debts could not be regarded as cheques chargeable with duty, the lender not being a banker *Ratilal Rangildas v. Vrijbhukhan Parabhuram* (17 Bom 684)

"A cheque is clearly not an assignment of money in the hands of the banker It is a bill-of-exchange payable at a banker's The banker is bound by his contract with his customer to honour the cheque when he has sufficient assets in his hands, if he does not fulfil his contract, he is liable to an action by the drawer, in which heavy damages may be recovered if the drawer's credit has been injured" *per* Sir G Jessel, M R, *Hopkinson v Forster* (19 L. R. Eq 76)

"A banker's cheque is a peculiar sort of instrument in many respects resembling a bill-of-exchange, but in some entirely different A cheque does not require acceptance, in ordinary course it is never accepted, it is not intended for circulation, it is given for immediate payment, it is not entitled to days of grace, and though strictly speaking an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet in the ordinary understanding of persons it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the position of the maker of a promissory-note or the acceptor of a bill-of exchange payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place" *per* Parke, B, *Ramchurn v. Luchmeechund* (9 Moore P. C. p 69).

A post dated cheque, whether payable to order or bearer, is available in the hands of a person who took it with knowledge that it was post dated, and is admissible in evidence *Bull* v *O'Sullivan* (L R. 6 Q B 209) *Gatty* v *Fry* (L R 2 Ex D 265) *Royal Bank of Scotland* v *Tottenham* (L R [1894] 2 Q B 715) *Ramen Chetty* v *Mahomed Ghouse* (16 Cal 432)

It is otherwise with bills-of-exchange and promissory-notes, see sec. 68. see also sec 2 (2), (3), *n*, and Art 21

"Chief Controlling Revenue-authority"

(8) "Chief Controlling Revenue-authority" means—

(*a*) in the Presidency of Fort St George and the territories respectively under the administration of the (Lieutenant) Governors of Bengal and the United Provinces of Agra and Oudh—the Board of Revenue,

(*b*) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) in Sindh—the Commissioner,

(*d*) in the Punjab and Burma, including Upper Burma—the Financial Commissioner, and

(*e*) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf

Note.

Cf Act I, 1879, sec 3 (7)

"*Means.*"—See sec 2 (2), *n*

Cl. (a)—Certain necessary changes of the names in this clause have been effected by the U P Act VII of 1902.

It is also necessary to substitute the terms 'Governor of Bengal' and 'Lieutenant Governor of Behar and Orissa' for those employed in the clause.

Cl. (d)—In the North-West Frontier Province this section must be altered as follows—for 'Punjab' *substitute* 'North-West Frontier Province,' for 'Financial' *read* 'Revenue,' for 'Local Government' *read* 'Chief Commissioner,' and for 'official Gazette' *read* 'Gazette of India' N.-W. F P. Reg VII of 1901, sec 6

Cl (e)—In virtue of his powers under this clause the Chief Commissioner of British Baluchistan has appointed the Revenue Commissioner to be the Chief Controlling Revenue authority in that province (No 6150, 12th Aug, 1899)

The Financial Commissioner of Burma was first added by Act XVIII of 1868. The Superintendent of Stamps in Assam was appoint-

ed Chief Controlling Revenue-authority by *Not.*, *13th Apr.*, 1883.

In the territories administered by the Agent to the Governor-General in Baluchistan the Revenue Commissioner has been appointed Chief Controlling Revenue-authority (*No* 9513, *9th Dec.*, 1899).

"Collector."

(9) "Collector"—

(*a*) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and without those limits, the Collector of a district, and

(*b*) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf.

Note.

Cf Act I, 1879, sec 3 (8), and Act XVIII, 1869, sec 3 (9).

"*Means*" "*Includes*"—See sec 2 (2), *n.*

Cf (a)—All Revenue Officers in charge of divisions in all the districts of the Madras Presidency have been invested with the powers of a Collector to be exercised within the limits of their respective jurisdictions (*Mad Not*, *28th June*, 1879) but these powers have been since restricted to officers holding the rank of Sub-Collector or Head Assistant Collector (*Mad. Not*, *27th Aug*, 1879).

Cf (b)—For the necessary modifications in the N.-W. Frontier Province, see sec 2 (8), *n*

It has been notified by the Chief Commissioner of Ajmer-Merwara that 'Collector' includes the Assistant Commissioners of Ajmer and Merwara (No 531—778, *2nd May* 1902).

It has also been notified by the Agent to the Governor General in Central India (Indore) that in the areas specified in No. 2635 I. B., *14th Nov.* 1912, and No. 262-I B., *10th Feb.* 1913 (see sec. 1, *n*), the powers and duties imposed by the Act on 'Collectors' shall be exercised by the District Judge (No 442 B., *10th Mar.* 1913).

"Conveyance."

(10) "conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred *inter vivos*, and which is not otherwise specifically provided for by Schedule I.

Note.

Cf Act I, 1879, sec. 3 (9); and Act XVIII, 1869, sec. 3 (11). Cf also 54 & 55 Vic., c. 39, s 54: and 33 & 34 Vic., c. 97, s. 70

Sale.—This is a transfer of ownership in exchange for a price paid or promised, or part paid and part promised. Transfer of Property Act (IV of 1882), sec 54

'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer. Indian Contract Act (IX of 1872), sec 77

It is a transmutation of property from one man to another in consideration of some price. Blackstone. "It may be defined to be a transfer of the *absolute* or *general* property in a thing for a price in money." Benjamin

A sale imports a 'quid pro quo,' in some way or other enuring to the benefit of the party selling. *Dunn* v. *Diamond* (4 B. & C. p 246)

'Price' means money only, for otherwise the transfer would be an exchange (Act IV of 1882, sec 118, and Art 31, *n*). See also *Volkart* v. *Vettivelu Nadan* (11 Mad p 467). *Queen-Empress* v. *Apparu* (9 Mad p 142). *Samratmal Uttamchand* v. *Govind* (25 Bom 696)

'Money' means and includes "not only coin, but also bank notes, Government promissory notes, bank deposits, and otherwise and generally any paper obligation or security that is immediately and certainly convertible into cash, so that nothing can interfere with or prevent such conversion." *Per* Stuart, C J, *Ref* (3 All p 793).

"*Includes a conveyance on sale.*"—The definition of 'conveyance' in the present Act is not restricted to, but includes, conveyances on sale. But the previous Act, like the English Stamp Acts of 1870 and 1891, was so restricted

In these Acts (s 70, s 54) "the expression 'conveyance on sale' includes every instrument, and every decree or order of any court or of any Commissioners, whereby any property [or any estate or interest in any property] upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction."

The Indian Act provides for transfers by operation of law under Art 18, though the duty on both is the same

A transfer of property and interests by one body of persons to another, or to a company whether comprising the same or different persons, is a 'conveyance on sale'. *In re Kondoli Tea Co* (13 Cal. 43)

'Transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and 'to transfer property' is to perform such act. Transfer of Property Act (IV of 1882), sec 5

A transfer of land in pursuance of a compromise of a widow's suit for maintenance is neither a settlement, nor a gift, but is a conveyance. *Ref* (21 Mad 422)

Where an equitable mortgagee obtains an order absolute for foreclosure under which the mortgagor is directed to execute, and does execute a conveyance of all his estate and interest in the property, to the mortgagee, the transaction is a 'conveyance on sale,' and chargeable as such *Huntington* v *Commissioners* (L R [1896] 1 Q B 422) And see *In re Lovell and Collard's Contract* (L. R. [1907] 1 Ch 249)

And where a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee in consideration of an additional sum of money, it was held to be a conveyance *Sinapaya* v *Shivapa* (15 Bom 675)

A deed by which a bank and its liquidators transferred to a new bank all its property, business and goodwill, with the benefit of all contracts and engagements, upon certain terms, contained a provision by which the old bank transferred to the new its immoveable property in Bombay comprised in its business premises for a consideration of Rs 1,50,000 On the question being raised whether this constituted a 'conveyance' or was merely a transfer of property from one company to another, it was held to be a 'conveyance,' or in other words, a sale of such property at a price of Rs 1,50,000 The circumstance that the transaction was part of a larger one between the banks, and that the price to be paid was part of a larger consideration for the agreement could not affect the character of the instrument *Ref* (20 Bom 432)

And where such a transfer takes place either upon the reconstruction of a partnership business as a limited liability company, or upon an amalgamation of two companies the transaction must likewise be a conveyance. *John Foster & Sons* v. *Commissioners* (L R [1894] 1 Q B 516) *Great Western Railway Co* v *Commissioners* (*Id* p. 507). *Furness Railway Co* v *Commissioners* (33 L. J. Ex. 173)

And so also upon a dissolution of partnership, the transfer by a retiring partner to a continuing partner of all his estate and interest in the partnership assets is chargeable as a conveyance: *Christie* v *Commissioners* (L. R 2 Ex. 46); see Art. 46, *n* And see also *Hiralal Navalram* (32 Bom 505).

And where the consideration for the transfer is not money merely, but stocks and securities, or where the transfer is one of shares in one company in exchange for shares in another company the transaction is none the less a conveyance on sale: *Coats* v. *Commissioners* (L. R. [1897] 2 Q B 423); *Commissioners* v. *Maple & Co.* (L. R. [1908] A. C. 22) And even though it be in the form of a declaration of trust: *Chesterfield Brewery Co.* v. *Commissioners* (L. R. [1899] 2. Q B. 7).

The duty would be chargeable on the value of the property conveyed and not upon the nominal value of the shares allotted: *John Foster & Sons* v. *Commissioners (ante)*

Such a transaction is to be distinguished from a simple transfer of shares which is chargeable under Art 62

When the new Company has not been formed, and the share value is merely nominal, evidence may be taken as to the actual value of the shares when issued *Commissioner of Stamp Duties* v. *Broken Hill South Extended, Ld.* (L R [1911] A C 439)

Deeds of family arrangement which involve the transfer of interests, though not strictly 'conveyances on sale' in the ordinary sense, may nevertheless be such as to constitute conveyances Where two deeds were executed between B and H who was his heir, wherein, after reciting that H had undertaken the payment of the mortgages on the estates and that B was indebted to H in certain sums, it was witnessed that in pursuance of a family arrangement B conveyed to H his unsettled estates subject to the mortgages and also certain chattels, power being reserved to B and H to cancel or vary the family arrangement at any time, it was held that the deeds were 'conveyances on sale' and chargeable with *ad valorem* duty "There may be many things which are clearly not conveyances on sale, and yet are family arrangements which involve certain considerations of money's worth being dealt with in the transaction, but as to which it could not correctly be said that there has been a conveyance on sale, but it seems to me equally clear that there may be things which are in a sense family arrangements, but which also involve and are, so far as the documents are concerned, conveyances on sale It the method or machinery adopted is really a conveyance on [illegible]le—a sale for money—it matters not that the ultimate purpose [illegible] parties in making use of this machinery may be of an indirect [illegible] not necessarily involving a money gain to the one side or to [illegible] other" *per* Kennedy, J, *Marquess of Bristol* v. *Commissioners* (L. R [1901] 2 K B p 340)

Where an instrument set forth a transaction between a railway company and the owners of a mine which resulted in the acquisition by the railway company, not of any property in the coal described in the instrument, but simply of a statutory right which imposes on the mine owner, on certain conditions being satisfied, a legal obligation *not* to work the mines or minerals, while it confers on the railway company a corresponding right, namely, to insist on the observance of that obligation but not to make active use of the mine owner's property, it was held not to be a sale within the meaning of the Stamp Act. "That transaction was one by which the mine owners, in consideration of a sum of money paid to them, became subject to a statutory obligation of a purely negative character: it closely resembles a transaction by which, for the like consideration, a mine owner

has entered into a covenant not to work or to get his mines or minerals. In my judgment a covenant entered into for value to abstain from doing a particular act or class of acts is not a sale within the meaning of the Stamp Act I think that in order that there may be a sale within the meaning of that Act, there must be a transaction as the result of which some property, or estate, or interest in property, is transferred to, or vested in a purchaser, or any other person on his behalf or by his direction": *per* Stirling, L. J., *Great Northern Railway* v. *Commissioners* (L. R. [1901] 1 Q. B. p. 428).

"*Property, moveable or immoveable*".—Property is that which belongs to a person exclusive of others, and which can be the subject of bargain and sale to another *per* Pollock, C B, *Potter* v. *Commissioners* (10 Ex. p 156)

'Immoveable property' includes " land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth " 'Moveable property' means "property of every description except immoveable property " General Clauses Act (X of 1897), sec. 3 (25) (34)

For other definitions see Indian Registration Act (III of 1877), sec. 3, Indian Succession Act (X of 1865), sec 3; Transfer of Property Act (IV of 1882), sec. 3

The term 'immoveable property' as used by the Indian Legislature has been held by the Privy Council to be identical with "lands or houses" The word 'immoveable' is used as something less technical than 'real,' and the term 'immoveable property' comprehends certainly all that would be real property according to English law, and possibly more *Maharana Fattehsanji* v. *Dessai* (L. R. 1 I. A. p 52).

Subjects of Transfer.—Property of any kind may be transferred unless the transfer is restricted by the law. As to the kinds of property of which the transfer is restricted, see Transfer of Property Act (IV of 1882), sec. 6

There can be no conveyance of a right which the law does not recognize, or of a power which has no legal existence, nor can a mere license to carry on a trade with material supplied, *e. g.*, asphalte paving, be chargeable as a 'conveyance on sale,' as no property is conveyed : *Limmer Asphalte Paving Co* v *Commissioners* (L. R. 7 Ex. p 216).

An actionable claim or right to sue, with some limitations, is assignable : Act IV of 1882, ss 131—138, sec. 6 (*e*).

[illegible] of property and falls within [illegible] *Gau* (27 Bom. 150) : [illegible] T. 659).

Goodwill.—"We think that goodwill falls under the description of 'property'. Were it otherwise, in cases where the goodwill operated as an increase of the value of real property, as in the sale of a well-accustomed shop the revenue would be easily defrauded, by dividing the price of the real estate and the goodwill into two portions, and paying the duty only on the former part" *per* Pollock, C. B., *Potter v. Commissioners* (10 Ex. p. 159). And see *In the matter of a Reference* (23 Cal. 283.)

"'Goodwill' I apprehend must mean every advantage—every positive advantage, if I may so express it, as contrasted with the negative advantage of the late partner not carrying on the business himself, that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business" *per* Wood, V. C., *Churton v. Douglas* (John. p. 188). This was approved by Lord Herschell in *Trego v. Hunt* (L. R. [1896] A. C. p. 17), where the older authorities are discussed.

"It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old established business from a new business at its first start. If there is one attribute common to all cases of goodwill, it is the attribute of locality. For goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it. Goodwill is bought and sold every day. It may be acquired in any of the different ways in which property is usually acquired. When a man has got it, he may keep it as his own. He may vindicate his exclusive right to it if necessary by process of law. He may dispose of it if he will—of course, under the conditions attaching to property of that nature" *per* Lord Macnaghten, *Commissioners v. Muller & Co's Margarine, Ld.* (L. R. [1901] A. C. p. 223.)

"Goodwill is as capable of being sold as a separate entity for what it is worth as is the tenant's interest in the lease. It may be that by the terms of a lease each must be sold, if sold at all, to the same person; but that does not prevent them being sold as separate and distinct entities, and if so sold goodwill, in my judgment, is property and is clearly not land," *per* Smith, L. J. "Although a goodwill may for the purpose of conveyance be separated from realty—*e.g.*, where an out going partner sells his interest or share in the goodwill to the continuing partners, who continue owners of the house to which the goodwill is attached—and if it is so separated it would be liable to duty as property, yet if it is not so separated, it will be treated on a sale of the premises where the business is carried

on, as something enhancing the value of the realty, and *pro tanto* augmenting the duty on a conveyance of the place where the business is carried on" *per* Vaughan Williams, L. J., *West London Syndicate* v. *Commissioners* (L. R. [1898] 2 Q. B. pp. 513, 529).

Where the goodwill of a business is sold, together with the premises where the business is carried on, for a lump sum, the goodwill is *primâ facie* annexed to the premises, and therefore if the business premises are situate abroad and there are no circumstances to rebut the presumption of annexation the goodwill will also be treated as property situated abroad. *Muller & Co's Margarine, Ld.* v. *Commissioners* (L. R. [1900] 1 Q. B. 310).

"As a general rule, there is nothing in the nature of a partnership asset to be sold which can fairly be termed goodwill in an ordinary partnership between solicitors" *per* Jessel, M. R., *Arundell* v. *Bell* (52 L. J. Ch. 537).

But an agreement for the sale of property including the goodwill of a business, the effect of which in equity, as between the vendor and the purchaser, was to make the purchaser the owner, and of which a Court of Equity would have decreed the specific performance in the event of the vendor not fulfilling his contract, has been held to be chargeable not as a conveyance but as an agreement. See under 'Agreement to Convey,' *post.*

A trade-mark, as well as a goodwill, is property, and may be conveyed. *Benjamin Brooke & Co.* v. *Commissioners* (L. R. [1896] 2 Q. B. 356), and so may the share of a patent and a sole license to use an invention. *Smelting Company of Australia* v. *Commissioners* (L. R. [1897] 1 Q. B. 175).

A policy of Assurance also is property within the meaning of the Stamp Act and assignable. *Caldwell* v. *Dawson* (5 Ex. 1). It is however exempt from duty under Art. 62 Ex. (c).

And so is the benefit of a contract assignable. *Danubian Sugar Factories* v. *Commissioners* (L. R. [1901] 1 Q. B. 245).

An assignment of copyright by entry made under the Indian Copyright Act (XX of 1847), s. 5, which has the same force and effect as an assignment by deed, is exempt from duty under Art. 23.

But if the assignments were made by deed, it is presumed they would be chargeable.

An instrument for the sale or transfer of a ship or vessel is specially exempted: see sec. 3 (2).

When property is conveyed subject to a debt, charge, or incumbrance, the consideration must be deemed to include it: see sec. 24.

"*Transferred inter vivos*"—This provision is adopted from the Act of 1869: it was omitted from the definition of 'Conveyance' in the Act of 1879, which included only conveyances on sale. Its

re-introduction in the present definition is in consequence of the ruling in the case of the *Maharajah of Durbhungah*, and for the purpose of including within its purview instruments of the kind there described

The instrumemt in question was one by which the Maharajah of Durbhungah, in consideration of his younger brother relinquishing all claims upon him for maintenance out of the Raj property, granted to him, under the Babooana form, a certain parganna and two-and-a-half lakhs of rupees, subject to certain conditions, one of which was that the name of the Maharajah should stand on the Collectorate roll as proprietor It was held to be neither a 'conveyance,' nor a settlement, nor an 'instrument of partition' within the meaning of Act I of 1879 "It is in its nature a deed of arrangement, by which a sum of money was paid absolutely, and a maintenance grant made by the Maharajah of D. to his younger brother, by way of discharge and satisfaction of all claims by way of maintenance or otherwise. The instrument would, no doubt, have been a 'conveyance' under the Stamp Act of 1869, because it is a deed by which property is conveyed *inter vivos*; but the definition of a conveyance in the Act of 1879 excludes all transfers or conveyances *which are not made by way of sale*, and this transfer, we consider, was clearly not made by way of sale". *per* Garth, C J, *In the matter of Maharajah of Durbhungah* (7 Cal. 21).

"*Otherwise specifically provided for by Sched I*"—These are :— 'Gift' (Art 33), which is a transfer of property made voluntarily and without consideration, 'Mortgage' (Art 40), which is the transfer of an interest only in property, 'Lease' (Art 35), which is the transfer of the right to enjoy property, 'Exchange' (Art. 31), which is the transfer of the ownership of one thing for another, neither of which is money, 'Settlement' (Art 58), which is a disposition of property for certain purposes (sec 2 (24), 'Declaration of Trust' (Art 64), which is the creation of an obligation annexed to the ownership of land arising out of a confidence to be exercised for the benefit of another; 'Composition-deed' (Art 22), which is a transfer by a debtor of his property for the benefit of his creditors, 'Transfer' (Art 62), and 'Transfer of a Lease' (Art 63), which are special transfers. The above are voluntary transfers, to which may be added a 'Certificate of sale' (Art 18), which represents a transfer by operation of law.

Agreement to convey.—This would be chargeable as an agreement and not as a conveyance. It is only when parties proceed to a conveyance that the duty attaches. So where a business was sought to be transferred in this manner the following observations were made.—"The instrument does not relate to the purchase and sale of the goodwill alone; it deals with the purchase and sale of certain premises, and of the goodwill of the business which has been carried on there Everything stated in it is by way of agreement that so and

so shall be done in the future If the purchasers choose to rest upon this agreement, and possession is given to them of the premises of the business and of the goodwill and they are not interfered with for the next twenty years that can make no difference it is only when they proceed to a 'conveyance' properly so called that this stamp-duty attaches, *per* Lord Esher M R "What I am now saying is in no way inconsistent with *Potter* v. *Commissioners of Inland Revenue*, where it was held that upon a conveyance of the goodwill of a business, the instrument should be stamped with an *ad valorem* stamp That case only shows that if people choose to convey real estate by one deed and 'goodwill' by another and to apportion the whole consideration between them, the Commissioners would get the proper stamp duty, partly upon the conveyance of the real estate and partly upon the conveyance of the goodwill But that decision does not affect the distinction between a contract and a conveyance, nor show that the Commissioners can insist upon every contract for the sale of property being stamped with an *ad valorem* stamp as if it were a conveyance, though it may be true that one of the parties to the contract acquires under it equitable rights which in a certain sense may be described as 'property' This is not a 'conveyance' at all It is an agreement, which is totally different thing " *per* Lindley, L J., *Commissioners* v. *Angus* (L R 23 Q B D pp 590, 594, 596) See also *Phillips* v. *Morrison* (13 L Ex 212), *Don Francesco* v. *DeMeo* (45 Sc L. R. 13)

It may be that sec 59 of the Stamp Act, 1891, has altered the law as laid down in *Angus's Case* with regard to agreements for the sale of certain classes of property therein specified of the nature of equitable interests, which would consequently be chargeable *ad valorem*, but no such provision exists in the Indian Act In this connection see *Benjamin Brooke & Co*, v *Commissioners: West London Syndicate* v. *Commissioners; Commissioners* v. *Muller & Co's Margarine, Ld. (supra)*

And where there was no sale of ascertained moveable property, but a contract or agreement by which the purchaser was to be at liberty to cut and take such trees as might within two years attain a certain size, such trees as he did not cut remaining the property of the vendor, the document was held to be an agreement for sale and chargeable as such, and not a conveyance: *Volra Malamadali* v *Ramchandra* (22 Bom 785)

It is otherwise with Agreements to lease (Art 35), or to make a settlement [s. 2 (24)], or to partition [s 2 (15)]

Transfer by Delivery.—Moveable property can be transferred by delivery It is not necessary that it should be transferred by a deed "A transfer of property may be made without writing in every case in which a writing is not expressly required by law:" Transfer of Property Act (IV of 1882), sec. 9

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Transfer by Delivery.—Moveable property can be transferred by delivery. It is not necessary that it should be transferred by a deed "A transfer of property may be made without writing in every case in which a writing is not expressly required by law." Transfer of Property Act (IV of 1882), sec. 9

"If a contract of purchase and sale, or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, *the case is not within the section, and no tax is imposed*. It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at. And if any one can carry through a purchase and sale without an instrument, then the legislature have not reached that transaction." *per* Lord Esher, M. R. *Commissioners v. Angus* (L. R. 23 Q. B. D. p. 589).

So if a conveyance of immoveable property, *e.g.*, a tea estate, were to contain a recital that all the machinery, houses, furniture, and other goods and chattels had been already delivered to the purchaser, the deed could not be chargeable in respect of such recital, and there is no provision in the Act for taxing it. This would be no fraud upon the revenue, although the deed were stamped as a conveyance of the immoveable property only and might at the same time be effective for the transfer of both.

"It is to be observed that what the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain." *per* Collins, L. J., *Muller & Co's Margarine, Ld. v. Commissioners* L. R. [1900] Q. B. p. 319).

And so upon a dissolution of partnership "if a retiring partner instead of assigning his interest takes the amount due to him from the firm and gives *a receipt for the money* and acknowledges that he has no more claims on his co partners, they will practically obtain all they want." Lindley, 'Partnership' (8th Ed.) p. 520.

"That might be done without any deed at all; and it is perfectly possible that it might be done, and that a deed might aftewards be drawn up which would not in any way do it but merely record it; and in that way such a deed as that might not require an *ad valorem* stamp;" but if the deed itself effected the transaction it would be otherwise. *Garnett* v. *Commissioners* (81 L. T. 633).

For the stamp duty on a Conveyance see Art. 23. See also Art. 62.

"Duly stamped"

(11) "duly stamped," as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in British India:

Note.

Cf. Act I, 1879, sec. 3 (10). Cf. also 54 & 55 Vic. c. 38, s. 27, and c. 39, ss. 10, 122.

This definition has been amended so as to make it applicable to instruments which are first executed abroad and afterwards stamped in British India.

"*Adhesive or impressed stamp*"—See sec. 2 (13), and ss. 11—15.

"*Means*"—See sec 2 (2), *n*

"*Not less than the proper amount.*"—There is no penalty for over-stamping.

"*In accordance with the law*"—It is necessary that an instrument to be 'duly stamped' should be stamped with a stamp not only of the amount required by law, but also in the manner required by law, the law being contained in the rules under the Act as well as in Act itself. *Ref* (7 Mad p 178) *Ref* (23 All 213) The rules must be taken as part of the Act sec 76

'Duly stamped' would mean stamped with the value and description of stamp required by the law in force when the instrument was executed or first executed see sec 33 (2) *Ref* (5 Mad 394). *Clarke v. Roche* (L R 3 Q B D 170 A remedy, however, is now provided by sec 37 for the use of stamps of improper description

But the omission of a stamp vendor to endorse on a stamped paper the particulars required by the rules framed under the Act by a Local Government would not render a document not duly stamped. *Ref.* (11 Mad 377)

Nor is the non-compliance of a treasury officer or stamp vendor with a direction in the rules to give a certificate an act for which the person purchasing the stamp from him can be punished by the invalidation of the stamp innocently bought by him It does not render the document not 'duly stamped' *Queen-Empress v Trailakya Nath Baral* (18 Cal 39)

See also ss 2 (6, *n*, 35, 62, *n*, and Stamp Rules (*Appx A*)

The certificate of a Collector endorsed on a document under ss 32 or 42 will give it the effect of a duly stamped instrument. see ss. 32 (3), 42 (2)

"Executed" and "execution"

(12) "executed" and "execution," used with reference to instruments, mean "signed" and "signature:"

Note.

Cf 54 & 55 Vic, c. 38, s 27 and c. 39, s 122; and also 33 & 34 Vic, c. 97, s 2

This provision is taken from the English Act.

"*Mean*"—See sec. 2 (2), *n.*

"Executed" means completed 'Execution' is, when applied to a document, the last act or series of acts which completes it It might be

defined as formal completion Thus execution of deeds is the signing, sealing and delivery of them in the presence of witnesses Execution of a will includes attestation In each class of instruments we have to consider when the instrument is formally complete " *per* Farran, J, *Bhawanji Harbhum* v *Devji Punja* (19 Bom p 638)

"*Signed*"— This includes 'marked, when the person making the mark is unable to write his name, it also includes stamped with the name of the person referred to General Clauses Act (X of 1897), sec 3 (52)

'Signature' need not necessarily be by writing the name A payment endorsed on a bond by direction of the obligor who cannot write but affixes his mark is a valid execution *Bheemangowda* v. *Eranah* (7 Mad H C R 358) Nor is it necessary that a signature should be at the foot of a document, which is the usually accepted method It may be affixed to any other part, provided it be intended to operate as an acknowledgment by the party that it is his instrument: *Mathura Das* v *Babu Lal* (1 All 683)

The ground of these decisions is that the 'signing' in such a manner is the usual method adopted by a person with the view of showing that he intended to be bound by the document So whether the circumstance of a debtor's not signing his name is the result of necessity as in the case of the illiterate debtor, or of custom as in the case of a class of debtors having a special status in the community can be of no importance *Gangadharrao* v *Shidramapa* (18 Bom. p 590) And see Art, 1, *n*

"I think that the contract contemplated by the Act cannot be deemed to have been made until all the persons, whose signatures are necessary to its complete validity as an instrument, have authenticated it by putting their names to it Unless they do so the document is not complete, as evidencing that which it is essential it should evidence on its face, namely, the consent of the parties. It is not enough for the purpose of the Stamp Act that the consent should be capable of being evidenced *aliunde* In my opinion a contract is 'made' where the signature of the last necessary party is affixed". *per* Collins, L J, *Muller & Co's Margarine Ld* v. *Commissioners* (L R [1900] 1 Q B p 319)

"An agreement is 'made' in England if it is executed in England by a party to the agreement whose execution is required to make the instrument on the face of it complete and perfect—and not the less so because it may also be described with equal propriety as made abroad". *per* Lord Macnaghten, *S C* (L R [1901] A. C p 223)

"Impressed stamp."

(13) " impressed stamp " includes—

(*a*) labels affixed and impressed by the proper officer, and

(*b*) stamps embossed or engraved on stamped paper.

Note.

Cf 54 & 55 Vic, c 39, s 2

This provision has been added to make it clear that the term includes both a stamp impressed by the Collector and also a stamp or embossed stamp-paper

"*Includes*"—See sec 2 (2), *n*

Cl (b) —For a description of these stamps see *Appx A*

"Instrument

(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded

Note.

Cf 54 & 55 Vic, c 39, s 122, and c 36 s 27

This definition is borrowed from the English Stamp Act, 1891

"*Includes*"—See sec 2 (2), *n*

The expression 'instrument' is used in this Act in more senses than one It is employed to mean both the 'matter' which constitutes an instrument, and also the 'material' on which the matter is recorded; *e g*, in ss 13, 14, 16

In the former sense it has been held to comprise an entry in a register intended to afford evidence of a contract of hiring. *Mulsaddi Lal* v *Harkish* (11 All L J 946)

'Document' means any matter expressed or described upon any substance, by means, of letters, figures, or marks, or by more than one of these means, intended to be used, or which may be used for the purpose of recording that matter Indian Evidence Act, sec. 3.

"Instrument of partition"

(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition.

Note.

Cf Act. I, 1879, sec. 3 (11); and Act XVIII, 1866, sec. 3 (22). Cf also 54 & 55 Vic. c. 39, s. 73; and 33 & 34 Vic. c. 97, s. 94

This definition has been extended so as to include an award by an arbitrator directing a partition

"*Means*", "*Includes*"—See sec 2 (2), *n*
"*Any property*"—See sec 2 (10), *n*

A note that certain property had, on partition, been allotted for the maintenance of parents, and a memorandum of the particulars of property which had, on partition, fallen to the share of one of the brothers, is not a partition deed, for 'it does not itself operate to release the joint interests of the other parties to the partition and create a sole interest in the person whose share it records' *Ref.* (7 Mad 385)

Two documents purported to be releases of certain moveable property, by which two persons relinquished their rights in a portion of the property each in favour of the other As a matter of fact one of them was not legally entitled, so that the release of the other was actually a gift it was held that the parties purported to be co-owners of the property, and in that capacity agreed to divide the property in severalty The documents were therefore really instruments of partition, and the arrangement fell within the definition of an 'instrument of partition' *Ref* (12 Mad 198)

And so also where three out of seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property made over to him, a division of family property having been effected, and acknowledged himself liable for one seventh of the debts of the family, it was held that the documents were deeds of partition *Ref* (15 Mad 164) And see *Ganpat* v *Supdu* (32 Bom 509)

"*Agree to divide*"—"When the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with, and in the estate each member has thenceforth a definite and certain share, which he may claim to receive and to enjoy in severalty, although the property itself has not been actually severed and divided"; *per* Lord Westbury, *Appovier* v. *Rama Subba Aiyan* (11 Moore I. A. 75).

An agreement for separation and partition, or a decree for separation and partition, if according to its terms it purports to be an agreement or a decree for present separation and present division in interest and right, operates to make the parties from that time separate, although the actual partition by metes and bounds and separate possession and enjoyment be postponed until the agreement or the decree is fully carried into effect: *Taj Protap Singh* v *Champa Kalee Koer* (12 Cal. p 103), and see the cases there cited

And so where the co-sharers in an undivided Hindu family agreed under a written instrument to divide the family property according to the terms of the award passed by arbitrators, it was held that the instrument was an agreement to divide property in severalty and was therefore a partition-deed *In re Vasanji Haribhai* (15 Bom 677).

Where the effect of the documents, though drawn in the form of releases, was to divide the family property among three brothers, they were held to be instruments of partition *In re Govind Pandurang Kamat* (35 Bom 75

But a deed by which one co-owner renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of certain lands over which he had no power of alienation was held to be not an 'instrument of partition,' as it was not a deed by which co-owners agree to divide property in severalty *Ref* (18 Mad 233)

"*Final order for effecting a partition by any Revenue-authority*"— "It is scarcely correct to describe an instrument of partition as the final order for effecting a partition passed by any Revenue-authority." The definition only *includes* such 'There must be, in the first place, the recorded act of partition or division by the co-owners or their agreement or contract to make it, and the 'final order' which follows, is simply the *fiat* of the Revenue authority sanctioning the partition, by means of which the partition becomes a completed act, and there can, of course, be no effectual partition until this is done" *per* Stuart, C J "The first question proposed for our consideration is, whether the order passed by a Revenue Court, authorizing a partition to proceed, or the order passed after the partition has been made declaring the various allotments of land, is the 'final order,' for effecting a partition An order authorizing a partition to proceed is, in some sense, an order for effecting a partition, but the order which declares the various allotments of the land is, in my opinion, the 'final order' which effects the partition" *per* Pearson, J "The 'final order' for effecting a partition passed by any Revenue-authority,' appears to be that which would be made under sec 131, Act XIX of 1873" *per* Spankie, J (F B *Ref* 2 All 664)

"*Or any Civil Court.*"—The final order of any Civil Court for effecting a partition, it is presumed, would be the order which embodies the result of and terminates the proceedings in a suit for partition, whether modified on appeal or not It cannot be taken to mean a provisional decree which has for its object the determination of the co-parcenery Such a decree ought properly to declare the several rights and liabilities which have been adjudicated on, and embody an order similar to one contemplated by sec. 215 and sec. 215A [O xx, R 15, 16], C. P. C., and where it further contains directions as to what remains to be done, the result of the further

partition in cases where no formal deed is drawn up and stamped.

Where, however, a formal instrument of partition is drawn up in pursuance of a previous agreement, order of a revenue authority, or of Civil Court, or of an award by an arbitrator, which has been duly stamped, the duty on the subsequent instrument is limited to eight annas see Art 45 (c)

Where a document, which was an award by four arbitrators, and purported to divide certain property between two persons was signed by the arbitrators, and also by the two co-sharers by way of assent, it was held that, as the instrument was "signed by the parties interested by way of assent to the award," it thus became an instrument of partition and should have been stamped accordingly. *Amarsi* v. *Dayal* (9 Bom 50)

Where an award by three arbitrators contained their decision, followed by directions as to how the parties should carry it out, it was held to be a deed of partition within the meaning of sec. 2 (15): *Kalidas* v *Tribhuvandas* (31 Bom 68)

As regards the duty chargeable and the method of levying it, see Art. 45, and sec 29 (g)

"Lease" (16) "lease" means a lease of immoveable property, and includes also—

(a) a patta,

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property,

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted:

Note.

Cf Act I, 1879, sec. 3 (12), and Act XVIII, 1869, sec. 3 (15). Cf also 54 & 55 Vic. c. 39, s. 75; and 33 & 34 Vic. c. 97, s 96.

"*Means*" and "*Includes*."—See sec. 2 (2), n

"*Writing*."—See sec. 2 (18), n.

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the tra-

feree, who accepts the transfer on such terms The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent Transfer of Property Act (IV of 1882), sec. 105

Immoveable property includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to any thing attached to the earth General Clauses Act (X of 1897), sec 3 (25)

For other definitions, see Indian Registration Act (III of 1877), sec 3, Indian Succession Act (X of 1865), sec 3, Transfer of Property Act (IV of 1882), sec 3

The term 'immoveable property' as used by the Indian Legislature has been held by the Privy Council to be identical with "lands or houses" The word 'immoveable' is used as something less technical than 'real', and the term 'immoveable property' comprehends certainly all that would be real property according to English law and possibly more *Maharana Fattehsanji* v *Dessai* (L R 1 I A p 52)

An instrument by which a Collector grants to an excise contractor the monopoly of manufacturing and selling certain spirits for three years at an annual rate, is not a lease *Ref* 12 All p 659)

"An 'Ijara' may mean a lease of lands, but it is more frequently used as a lease or farm of land revenue, rent, or other proprietary rights, as distinguished from a patta or a lease of land for cultivation" *per* Turner, C J, *Collector of Trinjore* v *Ramasamier* (3 Mad p 344)

An instrument termed an 'Ijara muchalka' was held to be an engagement entered into by the lessee, but not a counterpart, inasmuch as it did not appear that any instrument was executed by the lessor. The contents of the instrument further favoured the view that the term was used in the sense of a lease not of land, but of the revenue of land, or of the share of produce which a superior is entitled to receive from a subordinate proprietor "The instrument on which the suit is brought, was not an engagement in consideration of a lease for cultivation, but an engagement in consideration of a farm of the dues payable to the Raja The term 'lease' is defined in Act XVIII of 1869 as *including* every instrument not being a counterpart by which one person lets or agrees to let or takes or agrees to take immoveable property to or from another ; and 'immoveable property' is defined in the *General Clauses Act* as including 'benefits to arise out of land' It follows that the instrument in suit whereby the Mirasidars agreed to take on farm the dues of the Raja, which are benefits arising out of land, is a lease within the definition of that term" *per* Turner, C J, *Id*

A lease will include a covenant contained therein and relating thereto, for purposes of stamp-duty: *British Electric Traction Co.* v. *Commissioners* (L. R. [1902] 1 K. B. 441).

An option to renew is also auxiliary to and a part of a lease, and cannot be charged separately *Ref* (25 Mad. 3)

A prospecting license is not a lease, even though rent may be reserved. It is chargeable as an agreement under Art 5 *(c)*, Sch. I. (G O No 1677 S R *10th Apr*, 1902)

Lease and Mortgage.—Where a document purported to be a deed of mortgage with possession whereby the executant made over possession of certain lands to his creditor for nine years in liquidation of a debt, stipulating for a yearly payment of Rs 35, it was held to be in fact a sale of a term or lease for nine years with a reserved rent of Rs 35 in consideration of the amount of the debt, and to be chargeable as a lease with a premium *Ref* (7 Mad. 203). A '*Zur-i-peshgi* lease is a usufructuary mortgage see sec. 2 (17), *n.*

Cl (a).—A 'patta,' strictly speaking, is a lease of land for cultivation, or in other words an agricultural lease *Collector of Tanjore* v. *Ramasamier* (3 Mad p 346) See also Art 35, *n*

Cl (b).—The expression 'undertaking to cultivate or occupy,' means an accepted undertaking giving to the lessee a right or interest in the thing let *Apu Budgavdas* v *Narhari Annaje* (3 Bom 21)

A contract for grazing cattle, at so much per head, for certain periods, on pasture land, the possession of the land not being parted with, in favour of a person, who did not 'undertake to cultivate occupy or pay or deliver rent for the land or the grass has been held not to be a lease *In re Hormasji Irani* (13 Bom p 89)

'Counterparts' are provided for in Art 25

Cl (c).—A 'toll' is a tribute or custom paid for passage Wharton 'Toll' is a sum of money which is taken in respect of some benefit, the benefit being the temporary use of land *e g*, fairs and market tolls, 'toll thorough,' 'toll traverse,' anchorage tolls, and harbour tolls Stroud

A lease of ferry tolls under Ben Act I of 1885, sec. 9, would, it is presumed, fall under this clause

Cl (d).—The word "granted" written on the margin of an application for a lease to indicate its acceptance would constitute the document a lease; but the acceptance must be writing: *Syed Sufdar Reza* v *Amzad Ali* (7 Cal p 707)

A *doul durkhast*, if it amounts to a mere proposal by a tenant for a lease unaccepted by the landlord is not a lease. *Lall Jha* v. *Negree* (7 Cal 717); *Maharaja Luchmessur Singh* v. *Mussamut Dakho* (7 Cal. 708)

Such a proposal or petition asking for a lease is not subject to stamp-duty: *Cheonee Mundur* v. *Chundee Lall Dass* (14 W. R. 178).

For the stamp-duty on a Lease see Art. 35.

[(16A) "marketable security" means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom.]

Note.

Cf. Act XV, 1904, sec. 2. Cf. also 54 & 55 Vic., c. 39, ss. 82, 122.

This definition, which has been added by Act XV of 1904, is borrowed from the English Stamp Act, 1891.

A 'marketable' security means a security which is "capable, according to the use and practice of stock markets, of being there sold and bought. This will, on the one hand, exclude such securities as mortgages on land or proper heritable bonds, but, on the other hand, will include debentures of companies." *per* Lord Shand, *Texas Land and Cattle Co.* v. *Commissioners* (26 Sc. L. R. 49). See for example *Brown Shipley & Co.* v. *Commissioners* (L. R. [1895] 2 Q. B. 598); *Speyer Brothers* v. *Commissioners* (L. R. [1908] A. C. 92).

Where bonds payable to bearer and bearing interest at 4 per cent. were issued by a Company, with a condition expressed on the face of each that it would not be valid for any purpose unless authenticated by the certificate of the trustee, and were afterwards certified by him, it was held that the bonds, although not marketable till they were certified, became "marketable securities" the moment they were so certified. *Revelstoke* v. *Commissioners* (L. R. [1898] A. C. 565. And see *Baring* v. *Commissioners* (L. R. [1898] 1 Q. B. 78). See also *Noakes* v. *Commissioners* (83 L. T. 714).

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of, another, a right over or in respect of specified property:

"Mortgage-deed"

Note.

Cf. Act I, 1879, sec. 3 (13); and Act XVIII, 1869, sec. 3 (18). Cf. also 54 & 55 Vic., c. 39, s. 86; and 33 & 34 Vic., c. 97, s. 105.

"*Includes every instrument.*"—See sec. 2 (2), *n.* and 2 (14).

of performing some other condition. It may be either legal or equitable. In the former case the legal ownership of the property is transferred to the mortgagee; in the latter the legal ownership remains vested in the mortgagor, or in some other person than the mortgagee, and the security can only be enforced under the equitable jurisdiction of the Court: Wharton, Fisher, 'Law of Mortgage,' para 2.

'There are three kinds of security the first a simple 'lien;' the second a 'mortgage,' passing the property out and out, the third a security intermediate between a lien and a mortgage, *viz*, a 'pledge'—where by a contract a deposit of goods is made a security for a debt, and the right to the property vests in the pledgee, so far as is necessary to secure the debt," *per* Willes, J, *Halliday* v *Holgate* (L. R. 3 Ex. p. 302)

The definition in this Act is apparently intended to embrace all three kinds of security and to cover all kinds of property

"A 'lien' is the right to retain possession of a thing until a claim be satisfied It is the *tacita hypotheca* of the Civil Law Stroud

'Mortgage' is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability The transferor is called the mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed" Transfer of Property Act (IV of 1882), sec 58

This is not co-extensive with the definition given in this Act, as it is confined to one class of property only This point has been recently considered by the Legislature with a view to assimilating the two, but the definition has been advisedly left unaltered

'Pledge'—"The bailment of goods as security for payment of a debt or performance of a promise is called a 'pledge' Indian Contract Act (IX of 1872), sec 172 And see Arts 6, 16, *u*, 40, 41 and 57.

No precise form is required for a mortgage, and it is sufficient if it appears to have been the intention of the parties to create a charge upon lands, and in ascertaining the intention the form of expression, the literal sense is not to be so much regarded as the real meaning which the transaction discloses If the intention can be collected from the instrument, the form of expression is not material. *Raylum ir Ramgopal* v. *Ram Dutt Chowdhry* (2 B. L. R. p. 272). *Mart n* v *Pursram* (2 Agra H. C. R. 124)

"Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another

Such a proposal or petition asking for a lease is not subject to stamp-duty *Cheome Mundur* v *Chunder Lall Dass* (14 W. R. 178)

For the stamp-duty on a Lease see Art 35

[(16A) "marketable security" means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom]

Note.

Cf. Act XV, 1904, sec 2 Cf also 54 & 55 Vic, c 39, ss 82, 122.

This definition, which has been added by Act XV of 1904, is borrowed from the English Stamp Act, 1891

A 'marketable' security means a security which is "capable, according to the use and practice of stock markets, of being there sold and bought This will, on the one hand, exclude such securities as mortgages on land or proper heritable bonds, but, on the other hand, will include debentures of companies " *per* Lord Shand, *Texas Land and Cattle Co* v *Commissioners* (26 Sc L R 49) See for example *Brown Shipley & Co* v *Commissioners* (L R [1895] 2 Q. B 598); *Speyer Brothers* v *Commissioners* (L R [1908] A C 92)

Where bonds payable to bearer and bearing interest at 4 per cent. were issued by a Company, with a condition expressed on the face of each that it would not be valid for any purpose unless authenticated by the certificate of the trustee, and were afterwards certified by him, it was held that the bonds, although not marketable till they were certified, became "marketable securities" the moment they were so certified. *Revelstoke* v *Commissioners* (L R [1898] A C. 565 And see *Baring* v *Commissioners* (L R [1898] 1 Q B 78) See also *Noakes* v *Commissioners* (83 L T 714)

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of, another, a right over or in respect of specified property.

"Mortgage-deed"

Note.

Cf Act I, 1879, sec. 3 (13); and Act XVIII, 1869, sec. 3 (18) Cf also 54 & 55 Vic., c. 39, s, 86; and 33 & 34 Vic, c 97, s 105

"*Includes every instrument*"—See sec. 2 (2), *n* and 2 (14).

Mortgage is a form of security created by contract, conferring an interest in property, defeasible upon performing the condition of paying a given sum of money, with or without interest, at a given time, or

and the transaction does not amount to a mortgage, the latter person *is said to have a charge on the property* " (*Transfer of Property Act* (IV of 1882), sec. 100

"*Specified property*"—This would mean property described so that it may be readily recognized and identified, such as to meet the requirements of the Registration Act, sec 21 *Najibulla Mulla* v *Nusir Mistri* (7 Cal 196)

Where an instrument, in consideration of certain advances made by the Bank of Madras, purported to create a trust in favour of the Bank in respect of the "stock in trade, goods, chattels, and effects" of a certain business, it was held that the document in question was a mortgage deed within the meaning of sec 2 (17), inasmuch as it created a right in respect of 'specified property,' and that the fact that a trust was created thereby did not make it the less a mortgage · *Board of Revenue* v *Orr* (19 Mad L J 613)

But in the case of an instrument by which certain Cotton Press Companies agreed to make over certain profits from their respective presses to a trustee, to be held by him as security for the 'due observance of the conditions of the agreement,' it was held that the said fund indicated as security was not 'specified property' within the meaning of sec 3 (13), Act I of 1879 *Ref* (11 Mad 216)

A deposit of Government promissory notes as security for the due performance of a contract by a contractor has, however, been held to be a mortgage of the said property *Ref* (11 Mad 39)

Bonds and Mortgages – The distinction between these two classes of instruments appears to be that, while the one creates an obligation, the other not only creates the obligation, but secures its performance by a pledge of property

Where a deed of compromise or *solehnama* contained in addition to the terms of arrangement come to between the parties to the case an agreement to discharge the debt of the judgment-debtor within a period stated, and further a hypothecation of property as security for the debt, it was held to be a mortgage-deed, inasmuch as it evidenced both an obligation to pay money and a pledge of property for securing the payment thereof *Surju Prasad* v. *Bhawani Sahai* (2 All 481) See also *Mashook Ameen Suzzada* v. *Marem Reddy* (8 Mad. H. C R 31) *In the matter of Gajraj Singh* (9 All 585), under sec. 2 (5) (c)

A document which contained an undertaking by one Company to issue and hand to another Company second debentures for £8,000, to be held by them, together with other debentures for £25,000 already deposited, as security for a debt of £32,000, was held to be a mortgage-deed *Ref* (23 Mad. 207)

Under the ordinary law of mortgage, the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title So where a mortgage-bond contained certain stipulations under which the mortgagor engaged to repay to the mortgagee any costs he might incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee might pay, these stipulations did not appear to create any fresh obligation, but only tended to maintain in favour of the mortgagee the original security which was the purpose of the instrument, and it was held that no additional stamp duty was chargeable as for an indemnity-bond *Damodar Gangadar v Vamanrav Lakshman* (9 Bom 435)

Lease and Mortgage —Where a document purported to be a deed of mortgage whereby the executant made over possession of certain lands to his creditor for nine years in liquidation of a debt, stipulating for a yearly payment of Rs 35, it was held to be in fact a sale of a term or lease for nine years with a reserved rent of Rs. 35, in consideration of the amount of the debt, and to be chargeable as a lease with a premium *Ref* (7 Mad 203)

On the other hand, where a zemindar leased certain land in a village to cultivators in consideration of a rent of Rs 365 per annum in cash and of certain cart-loads of straw and of grass for eight years, as zemindari dues, and the lessees, by the deed, hypothecated certain other property for the purpose of securing the payment of the rent and for the performance of the rest of the engagement, the document, which was stamped as a lease, was held to be a mortgage-deed, *i e*, an instrument by which, for the purpose of securing a future debt, that is the rent to be paid, and for securing the performance of an engagement, that is the engagement to pay the rent and to deliver the other articles, yearly, the lessees created in favour of the lessor a right over specified property. *Ref.* (17 All 55).

And so where an instrument, described as a lease, was executed in consideration of Rs 120, and provided that the party paying it should remain in possession of certain land for twelve years, it was held to be a usufructuary mortgage under which the rents and profits were estimated to satisfy both principal and interest: *Ref* (21 Mad. 358) And see *Khoosal Rae v. Jankee Doss* (2 N. W. P. H. C. R. 9).

Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property, and to appropriate them in lieu of interest or in payment of the mortgage money, or partly in lieu of interest and partly in payment of the mortgage-money, the

Cl (a)—This is a general definition It is a doubtful whether it would be exhaustive enough to cover the case of a notice or advertisement in a newspaper which purports to insure against an accident, though the terms of cl (b) might possibly cover it

'A policy of insurance' for any payment agreed to be made during the sickness of any person or his incapacity from personal injury, within the meaning of the English Stamp Act, 1891 (54 & 55 Vic, c 39, s 98) has been specially declared (by 58 & 59 Vic c 16, s. 13) to include a notice or advertisement in a newspaper or other publication which purports to insure such payment

Cl. (b)—"A contract of life insurance is one by which persons entitle their executors to receive a sum of money for distribution among their family in the event of their death" *per* Channell, J, *Prudential Insurance Co* v *Commissioners* (L. R [1904] 2 K B p 665).

Where an instrument set forth that, in consideration of the payment by a person of a weekly premium of 6d, a certain sum would be paid to him on his attaining the age of sixty five, or, in the event of his dying under that age, that a smaller sum would be paid to his executors, it was held that the contract must be looked at as a whole, and that as such it was a policy of life insurance (*Id* p 658)

A certificate of membership of a Provident Society purporting to effect an insurance on the life of a person, in favour of another named therein, is a policy of life insurance, and chargeable under Art 47 D. *In re Himat Provident Society* (25 Bom 376)

An Entrance Certificate granted under the rules of the Uncovenanted Service Family Pension Fund, *which is a document whereby the* person to whom the certificate is issued in consideration of a money-payment secures an income after his death to another person, subject to certain contingencies, is a contract of assurance, and the document which evidences the contract a life policy: *Ref.* (19 Cal 499)

A policy which provided that, in consideration of a monthly payment of 2s. 6d. by the assured, a sum of £4 would be paid in the event of accident or illness per mensem, and £100 in the case of death, with other provisions in the event of the assured attaining 65, was held to be an accident insurance. *General Accident Insurance Corporation* v. *Commissioners* (43 Sc. L. R. 468).

A policy whereby an Insurance Company agreed to pay on behalf of employers of labour such sums as they should become liable to pay under the Employers' Liability Act, the Workmen's Compensation Act, or by the common law, in respect of personal injury to any workmen in their employ, was held to be not a 'policy of insurance against accident, inasmuch as the payment was not a payment agreed to be made upon the death of a person otherwise than from a natural cause,

or as compensation for personal injury, but was a payment agreed to be made as indemnity against claims for compensation for which the assured is answerable *Lancashire Insurance Co* v. *Commissioners* (L. R. [1899] 1 Q B 353)

And an instrument, styled therein a 'policy of insurance,' whereby the assured in consideration of the payment of a small sum was guaranteed the payment of £100 on a certain date, was held to be merely an agreement *Mortgage Insurance Corporation* v *Commissioners* (L R. 21 Q B D 352)

If an insurance policy is renewed, that is to say, if the original policy is extended it bears no new duty, but if a person cancels his policy and takes another on the same terms from another Company he has to pay the additional duty, because it is in fact a new policy

For the duty on Insurance Policies, see Art 47

"Policy of sea-insurance" or "sea-policy"

(20) "policy of sea-insurance or "sea-policy"—

a means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel · and

(*b*) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (*a*), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance :

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance :

Note.

Cf Act I, 1879, sec. 3 (15), as amended by Act VI, 1879;

Cf. also 54 & 55 Vic., c. 39, ss 92; 30 & 31 Vic., c. 23, ss 4, 12; 47 & 48 Vic, c. 62, s 8; and 6 Edw. VII, c 41, s. 1

"*Means*" "*Includes*"—See sec 2 (2) *n.*

This definition must be read along with sec 7 An 'instrument' to be a policy of sea-insurance must conform to the conditions imposed by that section

"*Ship or vessel*"—'Ship' shall include every description of vessel used in navigation not exclusively propelled by oars 'Vessel' shall include any ship or boat or any other description of vessel used in navigation General Clauses Act (X of 1897), sec 3 (51), (56).

Marine insurance is a contract by which one party, for a stipulated sum, agrees to indemnify another against loss of a ship, or the goods, or the freight, or the profits expected from the cargo, or of all or any of them, during a certain voyage or a certain period Arnould And see Marine Insurance Act, 1906 (6 Edw VII, c 41), sec. 1.

A certificate of marine insurance, there being no other document in contemplation of a more formal character between the parties, has been held to be a 'policy of sea insurance' "It is not a mere 'slip' or memorandum of a proposed insurance, the effect of which is discussed in *Xenos* v *Wickham* It mentions the sum for which the assurer declares, the name of the ship, the voyage and the premium, and provides for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and, lastly, it expressly guarantees the payment of losses and claims settled under it The document, on the face of it, does not contemplate the necessity of any other document of a more formal character being passed to the assured, and, read with the conditions to which it refers, is clearly the instrument upon which the assured is intended to enforce his claim It is therefore a document by which the parties executing it engage to indemnify against losses arising from an unknown or contingent event" *per* Sargent, C J, *In re Marine Insurance Certificate* (19 Bom 130)

As to the general practice in marine insurance, see *per* Blackburn, J, in *Xenos* v. *Wickham* (14 C B, N S p 453)

But an instrument described as an 'open cover' or 'slip' whereby

'contract' for sea-insurance. It was not a valid 'policy of sea-insurance,' for it did not conform to the requirements of sec. 93 of the English Stamp Act, 1891 (see s. 7, *post*): *Home Marine Insurance Co* v. *Smith* (L. R. [1898] 2 Q. B 351) See also *Skandinavia Reinsurance Co.* v. *Da Costa* (L. R. [1911] 1 K. B 137).

A 'contract' for sea-insurance of the character described in the explanatory clause of sub-sec (20) would not be within the definition of a "policy of sea-insurance" or "sea-policy," nor chargeable as such under Art. 47 A, unless it, in fact, amounted to a sea-policy within the meaning of sec. 7. Consequently the bills-of-lading ordinarily used by the Inland Navigation Companies, and commonly known as the 'red' and 'blue bills-of-lading,' whereby for an additional freight the Companies insure shippers against loss, are not so chargeable. A distinction must therefore be drawn between 'contracts of sea-insurance' and 'policies of sea-insurance' *In the matter of a Reference* (30 Cal. 565)

A 'letter of cover' or engagement to issue a policy is exempt from duty (see Art 47) To make it available as a policy it should be stamped as such, otherwise it will be of no effect, except to compel the delivery of the policy to which it refers. A penalty for neglecting to make out a duly stamped policy is provided by sec 66

For the duty on Policies of Sea-insurance see Art 47

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it :

"Power-of-attorney"

Note.

Cf Act I, 1879, sec 3 (16), and Act XVIII, 1869, sec 3 (24) Cf. also 54 & 55 Vic. c 39, ss 80, 81

The word 'includes,' has been substituted for 'means,' and the words 'for and in the name of' for 'in the stead of,' in Act I of 1879

This definition is not intended to include all contracts creating the relationship of principal and agent It relates to powers-of-attorney strictly so called.

"*Includes any instrument*."—See secs. 2 (2), *n*, and 2 (14)

A power-of attorney is a "delegation of authority in writing, by which one person is empowered to do an act in the name of another, and that is an appointment of an attorney Thus it is said, in *Com. Dig.* Tit 'Attorney,' 'an attorney is he who is appointed to do anything in the place of another, and he has a general authority, or a special one for some particular purpose'" *per* Tindal, C. J. "It is not necessary in order to make a man an attorney that he should have a discretion," it is enough if he is authorized to do an act in the name of another: *per* Cresswell, J.: *Walker* v. *Remmett* (15 L. J., C. P. 174) And see *Queen* v. *Kelk* (12 Ad & E. 559)

An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work is a power-of-attorney *Bhagvandas Kishordas* v. *Abdul Husein* (3 Bom 49)

An instrument authorizing one person to receive payment of money on behalf of thirty-six persons out of a fund in which they are jointly interested is a power-of attorney *Ref* (9 Mad 358). And see *Ref.* (15 Mad. 386) *Allen* v *Morrison* (8 B & C 565) As to community of interests see sec 5, *n*

A *sunnud* which authorizes a *gomasta* to collect rents and to sue for them is a power of attorney and requires to be stamped as such. *Raghu Nandan Thakur* v *Ram Charan Kupali* (10 W R, F B 39).

"*Under the law relating to Court-fees*"—It is not necessary for a pleader, who is authorized by the *vakalutnama* under which he acts to receive monies or documents for his clients in the course of the cause which he is empowered to conduct, or as a consequence of the decree or order of the Court in such cause, to have a 'power-of-attorney' for such purpose The receipt of money or documents under such circumstances is one of those ordinary duties which pleaders are continually called upon to perform for their clients, and a *vakalutnama* properly framed generally contains a power to perform such duties *Anonymous* (3 Cal 767)

So also, a power to a Vakil authorizing him to present an application for copies does not require to be stamped under the Stamp Act, it falls under the Court fees Act *Ref* (9 Mad 146)

On the other hand if the holder of the power is not a certified mukhtar or pleader, the instrument would be chargeable under this Act · *Parmanand* v *Sat Prasad* (33 All 487)

For the stamp duty chargeable on Powers-of-attorney see Art 48

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881,

"Promissory note"

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:

Note.

Cf. Act XVIII of 1869, sec 3 (25) Cf. also 54 & 55 Vic, c. 39 s. 33; and 33 & 34 Vic., c. 97. s 49

"*Means*": "*Includes*"—See sec 2 (2), *n*

"*As defined by the Negotiable Instruments Act*"—A 'promissory note' is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only, to, or to the order of, a certain person, or to the bearer of the instrument. A promise to pay is not 'conditional' by reason of the time of payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain. The sum payable may be certain, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due. The person to whom it is clear that the direction is given or that payment is to be made, may be a 'certain person' although he is misnamed or designated by description only. Negotiable Instruments Act (XXVI of 1881) ss. 4, 5.

"*It also includes*"—By the English Stamp Act of 1870 (33 & 34 Vic, c. 97), s. 49, a 'promissory note' is defined to mean and include (1) any document or writing (except a bank-note) containing a promise to pay any sum of money, and (2) a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency, which may or may not be performed or happen, and to be a 'promissory note' for the said sum of money. This has been introduced almost verbatim into the Act of 1891 (54 & 55 Vic., c. 39) s. 33, and the definition in the Indian Act has been assimilated to both.

Is is to be observed that the ordinary meaning of a 'promissory note' was expressly enlarged for the purposes of those Acts. Under the previous Stamp law it had been held that a promise to pay on a contingency (*Carlos v. Fancourt*, 5 T. R. 482), or to pay a sum of money on demand with interest, and also to give a life policy and the lease of a house, being not only a promise to pay money, but also to do another act, was not a promissory note (*Follett v. Moore*, 4 Ex. 410); and that a promise in writing to pay 'the secretary for the time being' of a certain company, was also not a promissory note, as it was a floating, contingent promise the performance of which was to be made to a person to be ascertained *ex post facto* (*Storm v. Stirling*, 23 L. J., Q. B. 298).

As to the alteration introduced by the English Act of 1870, sec. 49, Pollock, B, has observed. "It is unfortunate, I think, that in a statute dealing with revenue matters natural terms have been enlarged so as to create a sort of legislative document, other and different to the document which is commonly known by the term

used. In the section we have to construe here the legislature have taken a term of well-known meaning, and have then said it is to mean something else", *Mortgage Insurance Corporation* v. *Commissioners* (L R 20 Q B D p 651) And see *per* Jessel, M. R. in *Fisher* v. *Calvert* (27 W R 301), *ante*, sec 2 (2), *n*

In order that a document may be a promissory note within sec 49 it must substantially contain a promise to pay a definite sum of money and nothing more A document containing a promise to pay money as part of a contract containing other stipulations would not be a promissory note within the Act "Sub-section 1 defines a promissory note as a document or writing (except a bank note) containing a promise to pay any sum of money To constitute the document a promissory note within that sub-section there must be a promise to pay a defined sum of money, and a defined sum of money only By sub-sec 2 a note promising the payment of any sum of money out of a particular fund or upon a contingency is to be deemed a promissory note for 'the said sum money.' There, again, it must be a defined sum of money, though under that sub-section the sum may be payable out of a particular fund or upon a contingency But where, though the document contains a promise to pay a defined sum of money it also contains certain stipulations under which, instead of the promisor paying that defined sum, there will be an undefined sum to be paid, in my opinion that document is not a promissory note within sec 49 " *per* Lord Esher, M R "The section speaks of a document containing a promise to pay a sum of money. In my opinion that means a definite sum of money, not a fluctuating or unascertained sum, and I also think that 'containing a promise to pay' must mean that that is the substance of the document, the whole contents, it cannot mean containing a promise to pay forming one of a number of stipulations If the instrument is not merely a promise to pay but contains a promise to pay in connection with a number of other stipulations, then I think it is not a promissory note within the meaning of the section " *per* Lindley, L J "Some limitation must be found for the words. In my opinion the true interpretation is that they are meant to include documents, the contents of which consist substantially of a promise to pay a definite sum of money, and of nothing else": *per* Bowen, L. J., *Mortgage Insurance Corporation* v. *Commissioners* (L. R 21 Q B D. 352)

To enure as a promissory note the instrument must contain a promise to pay money only Therefore a document which contains a promise to pay money and a certain quantity of grain is not a promissory note : *Muttu Chetti* v. *Muttan Chetti* (4 Mad. 296)

Moreover it must contain an express promise to pay, otherwise it is not a promissory note : *Govind* v. *Balwantrao* (22 Bom. 986). It must also be definite in its terms, and not vague · *Carter* v. *Agra Savings Bank* (5 All 562)

An instrument to be a promissory note must contain words that amount to an undertaking to pay, and not a mere acknowledgment of a liability to pay. Such words as 'I am liable to pay' or 'I am bound to pay' would not constitute an undertaking to pay. *Tirupathi Goundan* v *Rama Reddi* (21 Mad 49)

Notes, Bonds, Agreements—As to the distinction between these instruments see sec. 2 (5), *n, ante*

An instrument in these terms—"On the day of the transfer of the license I agree to pay you the sum of £25," was held to be a promissory note and not an agreement *Smith* v. *Dean* (69 L J., Q B. 331)

But an instrument issued by an incorporated Company purporting to be a debenture, with coupons for the payment of interest attached, and containing an engagement on the part of the Company to pay "the amount of this debenture" to *A B* or order on a given day with interest at 5 per cent, was held not to be a promissory-note. *British India Steam Navigation Co.* v *Commissioners* (L R. 7 Q B D. 165).

The following document—"I, J H Dawe, promise to pay Mr. Yeo on his signing the lease of the Castle Inn, Plymouth, the sum of £150," was also held to be not a promissory-note within the meaning of sec. 49 of the Stamp Act, 1870 *Yeo* v *Dawe* (53 L. T R 125).

A document which contained a guarantee by a third party for the due discharge of the undertaking was held not to be a promissory note: *Balck* v *Pitcher* (25 T L R 497) And see *Hodgkins* v. *Simpson* (25 T L R 53)

But a joint and several promissory-note, made by a principal and surety, which, after providing for the payment of a sum of money by instalments ended with a clause providing for giving of time, was held to be a good promissory note *Yates* v *Evans* (66 L T R 532) See also *Kirkwood* v *Carroll* (L. R [1903] 1 K B 531)

According to the definition a provision for payment of future interest in a promissory note would not affect its character See *Bansidhar* v *Bu Ali Khan* (3 All 260), *Nand'in Misser* v *Chatterlati* (13 B L. R. App 33)

Under Act I of 1879, which contained no definition of 'promissory note,' it was held that a letter containing a request to borrow a sum of money and a promise that the same should be repaid with interest on a certain day was not a promissory-note *Dhondilal Nirlarthat* v. *Atmaram Moreshwar* (13 Bom. 669) See also *Narayanaswami Mudaliar* v. *Lolambalammal* (23 Mad p 156, *n*)

But a letter reciting a request for a loan, the amount to be paid to the bearer of the letter, and continuing "this sum I shall repay with interest, and get back this letter: I request you will not neglect to pay the amount on the strength of this letter" was held to be a

used In the section we have to construe here the legislature have taken a term of well-known meaning, and have then said it is to mean something else", *Mortgage Insurance Corporation* v. *Commissioners* (L. R 20 Q B D p 651) And see *per* Jessel, M. R. in *Fisher* v *Calvert* (27 W R 301), *ante*, sec 2 (2), *n*

In order that a document may be a promissory note within sec 49 it must substantially contain a promise to pay a definite sum of money and nothing more A document containing a promise to pay money as part of a contract containing other stipulations would not be a promissory note within the Act "Sub-section 1 defines a promissory note as a document or writing (except a bank note) containing a promise to pay any sum of money To constitute the document a promissory note within that sub-section there must be a promise to pay a defined sum of money, and a defined sum of money only By sub-sec 2 a note promising the payment of any sum of money out of a particular fund or upon a contingency is to be deemed a promissory note for 'the said sum money.' There, again, it must be a defined sum of money, though under that sub-section the sum may be payable out of a particular fund or upon a contingency. But where, though the document contains a promise to pay a defined sum of money it also contains certain stipulations under which, instead of the promisor paying that defined sum, there will be an undefined sum to be paid, in my opinion that document is not a promissory note within sec 49 " *per* Lord Esher, M R "The section speaks of a document containing a promise to pay a sum of money. In my opinion that means a definite sum of money, not a fluctuating or unascertained sum , and I also think that 'containing a promise to pay' must mean that that is the substance of the document, the whole contents , it cannot mean containing a promise to pay forming one of a number of stipulations It the instrument is not merely a promise to pay but contains a promise to pay in connection with a number of other stipulations, then I think it is not a promissory note within the meaning of the section " *per* Lindley, L J. "Some limitation must be found for the words. In my opinion the true interpretation is that they are meant to include documents, the contents of which consist substantially of a promise to pay a definite sum of money, and of nothing else" · *per* Bowen, L J , *Mortgage Insurance Corporation* v. *Commissioners* (L. R. 21 Q. B. D. 352).

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Moreover it must contain an express promise to pay, otherwise it is not a promissory note : *Govind* v. *Balwantrao* (22 Bom. 986) It must also be definite in its terms, and not vague : *Carter* v. *Agra Savings Bank* (5 All 562)

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According to the definition a provision for payment of future interest in a promissory note would not affect its character. See *Bansidhar* v. *Bu Ali Khan* (3 All 260), *Nandan Misser* v. *Chatterlal* (13 B L. R. App 33)!

Under Act I of 1879, which contained no definition of 'promissory note' it was held that [illegible]

Atmaram Moreshwar (13 Bom. 669) See also *Narayanasami Mudaliar* v. *Lokambalammal* (23 Mad p 156, *n*).

But a letter reciting a request for a loan, the amount to be paid to the bearer of the letter, and continuing "this sum I shall repay with interest, and get back this letter: I request you will not neglect to pay the amount on the strength of this letter" was held to be a

'promissory note' and not a mere proposal for a loan, there being an intention indicated by the language employed, that if the addressee consented to make the loan, the letter itself should operate as a security for repayment *Channamma* v *Ayyanna* (16 Mad 283).

This view has since been dissented from, and the opinion expressed that a conditional undertaking to pay a sum of money would not be a promissory note within the meaning of sec 34 of the Act of 1879 *Bharata Pisharodi* v *Vasudevan Nambudri* (27 Mad 1) It is clear, however, that such an instrument would now be covered by the latter part of the present definition

For the duty leviable on Promissory notes see Art 49

"Receipt"

(23) "receipt" includes any note, memorandum or writing—

(*a*) whereby any money, or any bill-of-exchange cheque or promissory note is acknowledged to have been received, or

(*b*) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or

(*c*) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(*d*) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person

Note.

Cf. Act I of 1879, sec 3 (17) Cf also 54 & 55 Vic, c. 39, s 101; and 33 & 34 Vic, c 97, s 120

"*Includes*"—The word 'includes' has been substituted for the word 'means' in the Act of 1879, see sec 2 (2), *n*. The words 'or advertisement' have been omitted

"*Money*"—This means and includes "not only coin, but also bank notes, Government promissory notes, bank deposits, and otherwise and generally any paper obligation or security that is immediately and certainly convertible into cash so that nothing can interfere with or prevent such conversion" *per* Stuart, C, J, *Ref.* (3 All p 793).

"*Writing.*"—See sec. 2 (18), *n*

This definition must be read along with the exemptions contained in Art 53 (see s. 3). A receipt for payment of money without consideration requires no stamp, nor in any case unless the amount exceeds Rs 20.

"It is not necessary to have a receipt given in any specific terms, it is sufficient if it purports to be a discharge and is intended to operate as such. Any form of words which, if duly stamped, would operate as a receipt, is to be considered liable to the stamp duty," *per* Lord Kenyon, C J, *Spawforth* v *Alexander* (2 Esp 621)

The word 'settled,' written on a bill, by way of a receipt, with the writer's initials appended, was held to be a receipt and liable to duty *Id.* And see *Reg* v *Boardman* (2 M & R 147) *Smith* v *Kelby* (4 Esp 249) *Rex* v *Hunter* (2 Lea C C 711)

"Any writing which signifies or imports an acknowledgment is enough Entries import an acknowledgment, whether they are merely initialled, or whether in addition to the initials they contain the words 'entered' or 'received '" *per* Lord Russell, C J, *Attorney-General* v. *Carlton Bank* (L R [1899] 2 Q B 158)

But it is not sufficient that there should be a statement merely, there must be an acknowledgment, either express, or signified, or imported So where a memorandum made by one person stated that money had been received by another from a third person, it was held to be no receipt *In re Jamnadas Harinaran* (23 Bom 54 And see *Rex* v. *Harvey* (M & R 227), *Levy* v *Alexander* (4 Ex 485)

Cl. (a) —Where the receipt of a sum of money exceeding Rs 20

i

s

c

And the same was held where the receipt of a cheque for Rs 100 was acknowledged by letter in the following terms—"Your cheque for Rs 100 to hand " *Queen-Empress* v *Mutturulandi* (11 Mad 329)

A mere note or memorandum of the payment of a sum of money on a piece of paper is not a 'receipt,' unless it is given to the person to whom the money is due, to be kept by him as his voucher *Day* v. *Glasier* (37 Sc. L R. 736)

A bank memorandum, purporting to intimate that money remitted by one person had been credited to the account of another, was held to require no stamp, as the money did not appear to have been paid in satisfaction of a debt, and further that, even assuming that it was so paid, the document was not 'a receipt or discharge' because it was not given to the party who paid the money "The document in question is nothing more than the ordinary intimation which the Bank gives to its customer that a certain sum has been paid in by the Commissioner of Stamps to his credit. If the instrument were a receipt, then in a case where it would be proper for the Bank to give notice of a particular payment to several different people, each one of the notices so given would have to be stamped as a receipt It seems

us perfectly clear that this was never the intention of the Stamp Act;" *per* Garth, C. J, *In the matter of the Uncovenanted Service Bank* (4 Cal. 829)

This is in harmony with Art 53, Ex (*h*), but see the proviso

Cl. (b).—Where a paper, called a 'Sarkhat,' containing entries of sugarcane juice supplied by *A* to *B*, and signed and given to *A* by *B*, although it purported to acknowledge the receipt of goods, contained no mention of any debt or the satisfaction of any debt, it was held to be nothing more than a memorandum of sugarcane juice supplied, and required no stamp *Debi Prasad* v *Rupu* (6 All 253)

But where a 'Sarkhat' consisted of a running account between debtor and creditor, and contained entries of payments made from time to time, which were intended to operate as acknowledgments of part payments of money due, it was held that each entry exceeding Rs. 20 required to be stamped *Emperor* v *Tulshi Ram* (35 All. 290).

Cl (c)—The writing off of a debt which is intended to be considered as a payment of money, though no money passes, would be a receipt and liable to stamp-duty An instrument, however, which only admitted a settlement on a bygone day, might operate merely as an admission *Lucas* v *Jones* (5 Q B p 953)

"When the parties agree to consider both debts discharged, without actual payment, it has the same effect, because in contemplation of law a pecuniary transaction is supposed to have taken place by which the debt was then paid off" *per* Lord Campbell, C J, *Livingstone* v *Whiting* (15 Q B 722)

Cl (d)—Where a solicitor, who was engaged by a bank upon a salary to conduct their legal business, and sue for and recover moneys due to the bank, was in the habit of entering the sums recovered in an account book, and, on handing over such sums to the secretary or cashier of the bank, of obtaining the signature of his initials against each entry and the date on which they were handed over, in some instances with the addition of the word 'received,' the account book being the property of the solicitor, and remaining in his possession, it was held that as the initialling of the entries in the account book, whether with the word 'received' or not, was intended as an acquittance of the solicitor in respect of the money handed over by him, the entries so initialled constituted 'receipts,' which required to be stamped, and none the less because the solicitor was a servant of the bank on whose behalf he had received the money, and the acknowledgment was given by a fellow-servant. Such receipts are distinguishable from the invoices used by clerks in large shops, because "the entries in that case are intended merely for the regulation of book-keeping, and are not regarded as documents of acquittance to the clerk who hands over the money, and are not retained by him,"

per Lord Russell, C. J., *Attorney-General* v. *Carlton Bank* (L. R. [1899] 2 Q. B. 158)

Before an acknowledgment for the payment of money can be chargeable as a receipt the relation of debtor and creditor must be shown to exist No such relation exists between fellowservants or employees of a company or firm *In re Burn & Co.* (37 Cal 634)

Evidence is admissible to show by the course of business between the parties whether an entry is or is not a receipt: *Reg.* v. *Overton* (18 Jur 134)

An entry in a debtor's khatta-book by his creditor, representing a payment of Rs 405-4, as against a debit of the same amount, and signed by the creditor was held to be a 'receipt' "The signature of Juggernath and the amount, Rs 405-4, in his handwriting, form in my opinion, a writing whereby the debt was acknowledged to have been paid off I think so, because of the place in which this writing appears, namely against the entry in the debtor's book where the debtor recorded payment of his debt It is true that we must look to the intention of the parties as to what this writing by Juggernath was intended to import, and upon the evidence I have no doubt that the intention was that what Juggernath wrote should operate as a receipt " *per* Tottenham, J, *Queen Empress* v. *Juggernath* (11 Cal 267)

Payment without consideration.—The exemption contained in Art. 53, Ex (*b*), was intended apparently to apply to receipts for 'voluntary' payments, which, in the ordinary legal acceptation of the term, are payments without consideration, such as payments made merely in consideration of natural love or affection, or mere gifts: *In re Karachi Municipality* (12 Bom 103)

A receipt given by a barrister for a fee is exempt from stamp-duty, as being for the payment of money without consideration. "A barrister's fee for services in litigation is a gratuity or honorarium. The relation of counsel and client in litigation creates an incapacity to contract for such services Such services are not capable of forming such a valuable consideration as will support an action on the client's promise to pay, and conversely, if the client does pay, the payment must be held to be one without consideration". *Ref* (9 Mad. 140): *Ref* (16 All 132) See also *In re Beavan* (23 L. J Ch. 53)

More recently it has been held that counsel's receipts are not exempt: *General Council of the Bar* v. *Commissioners* (L. R. [1907] 1 K. B. 462)

A receipt granted on behalf of a Municipal body acknowledging receipt of monies, paid in satisfaction of municipal taxes, and exceeding twenty rupees in amount, requires a stamp. "The receipt in question is one for payment of house-rate due to the Municipality under

the Act constituting the Municipality. The payment is not gratuitous, but one in satisfaction or discharge of legal obligation imposed by the Act and in order to relieve the payer from the consequence which would ensue in case of his committing default, and is, therefore, not one without consideration" *In re Karachi Municipality* (12 Bom. 103).

Proof of unstamped receipt.—A receipt stamped after execution, but before production in Court, was held to be not duly stamped, and therefore inadmissible It was held also, that evidence was admissible to show whether or not the instrument was stamped before or at the time of execution *Jethibai* v *Ramchandra* (13 Bom 484).

An unstamped receipt may, however, be admitted in evidence upon payment of a penalty of one rupee by the party tendering it: see sec. 35 *(b)*.

But a party making payment is in no case obliged to take a receipt; he may prove the payment by other evidence, as he may even where a receipt has been taken For it is not like the case of a contract, which, if reduced into writing, can be proved only by production of the writing And where a receipt is void for want of a stamp, it may be shown to a witness to refresh his memory *Veale* v. *Warner* (1 Saun 325, *n*) And see sec 35, *n*

For the stamp duty chargeable on Receipts see Art 53

"Settlement"

(24) "settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(*c*) for any religious or charitable purpose·

and includes an agreement in writing to make such a disposition, [and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.]

Note.

Cf Act I, 1879, sec. 3 (19); Act XV, 1894; and Act XVIII, 1869, sec. 3 (32) Cf. also 54 & 55 Vic, c. 39, ss. 103-106

persons jointly, and although the result must be that a provision is made for them, it does not appear that it was the object of the gift:" *per* Turner, C. J., *Ref.* (7 Mad p 350)

And where by a deed of family arrangement, one brother conveyed a purgunnah and a sum of two and a half lakhs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims, it was held not to be a settlement *In the matter of Maharaja of Durbhungah* (7 Cal. 21).

But, on the other hand, where there was a provision merely for the life of the donee with reversion to the settlor and his heirs, the instrument was held to be a settlement *Ref* (21 Mad 422).

"*Some person dependent on him* —These words are intended to prevent the exclusion of settlements in favour of a single person

Conveyance and Settlement.—A settlement made for any other object or consideration than those specifically mentioned would, it is presumed, be chargeable as a conveyance, if not otherwise specifically provided for see sec 2 (10)

Will and Settlement.—'Will' means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death Indian Succession Act (X of 1865) sec 3 Probate and Administration Act (V of 1881) sec 3

It includes a codicil and every writing making a voluntary posthumous disposition of property General Clauses Act (X of 1897) sec 3 (57).

The most important test in distinguishing a 'settlement' from a will is whether it is intended to have immediate operation or not. Where an instrument, which was called by the party executing it a testamentary trust deed, purported to vest the property in trustees at once, while the provisions as to the management and the ultimate beneficial interest in the property, showed that it was contemplated that its operation might extend beyond the lifetime of the owner, it was held to be a 'settlement' The reservation of the management by the owner during his life could not affect its character. The introduction into such an instrument of provisions incongruous to the character of a settlement would only show that the settlor attempted to include what he could not, and not that he intended to resort to a different species of disposition: *per* Sargent, C. J., *Ref* (20 Bom. 210).

[illegible] settlement [illegible] render

An order of the Court, effecting a settlement in pursuance of a will by which a fund was bequeathed to a man until marriage, and

…tled on his wife and children, was held to require the …nt stamp *In re Gowan* (L R 17 Ch D 778)

…an agreement in writing — If a formal deed is sub…awn up and executed in pursuance of the agreement it …ry to stamp both as settlements It is sufficient if the … stamp of eight anna

…by of declaration of trust — This provision has been … XV of 1904 to prevent the evasion of duty by the … an oral disposition of property coupled with a record of the form of a declaration of trust see Art 64 *n* …stamp duty le[vi]able on Settlements, see Art 58

CHAPTER II

STAMP-DUTIES

…—*Of the Liability of Instruments to Duty.*

…ubject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount in that schedule as the proper duty therefor …ly, that is to say—

…s charge …duty

…very instrument mentioned in that schedule which, … having been previously executed by any person, is executed in British India on or after the first day of July, 1899;

(*b*) every bill-of-exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill-of-exchange, cheque or promissory note) mentioned in that schedule which, not having been previously executed by any person is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India:

persons jointly, and although the result must be that a provision is made for them, it does not appear that it was the object of the gift:" *per* Turner, C. J., *Ref.* (7 Mad p 350)

And where by a deed of family arrangement, one brother conveyed a purgunnah and a sum of two and a half lakhs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims, it was held not to be a settlement *In the matter of Maharaja of Durokungah* (7 Cal. 21).

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The reservation of a life estate by a settlement would not render it the less a settlement: *Crossman* v *Queen* (L. R. 18 Q. B. D. 256): *Attorney-General* v. *Heywood* (L. R. 19 Q. B D. 326).

An order of the Court, effecting a settlement in pursuance of a will by which a fund was bequeathed to a man until marriage, and

contract for the sale of a business in Germany was signed by the vendor in that country and by the vendees in England, it was held that the contract was made in England *Muller & Co's Margarine, Ld v Commissioners* (L R [1900] 1 Q B 310) See sec 2 (12), *n* And see also *In re Wr[illegible]* (1 Ex 458)

"*Every instrument executed*" See sec 2 (12), (14)

"*British India*" See sec 1, *n*

Cl (b)—A promissory note made in Jamaica, and which by the laws of that island was void for want of a stamp, was held to be inadmissible in evidence in the English Courts "As it is not stamped it cannot be received in evidence Then it is said we cannot take notice of the revenue laws of a foreign country but I think we must resort to the laws of the country in which the note was made, and unless it be good there it is not obligatory in a Court here" *per* Lord Kenyon, C J, *Alves v Hodgson* (7 T R 241)

This has been explained thus—"I agree that if for want of a stamp a contract made in a foreign country is void, it cannot be enforced here But if that case meant to decide, that where a stamp is required by the revenue laws of a foreign State before a document can be received in evidence there, it is inadmissible, I entirely disagree If that were so, it would be impossible to get out of this dilemma, that if a document were properly stamped according to the law of this country, it could not be given in evidence here because it was improperly stamped according to the law of a foreign country where it was given" *per* Rolfe, B, *Bristowe v Sequeville* (5 Ex. 275). See also *In the goods of McAdam, post*

For definitions of 'bills,' 'cheques' and 'notes,' see ss 2 (2), 2 (3), 2 (7) and 2 (22) For a fuller description see the Negotiable Instruments Act (XXVI of 1881)

Cl (c)—This provision is in accordance with the decision in *Oakes v. Jackson* (1 Mad 134), where it was held that an instrument of agreement executed in England by E and D with A the senior partner in a firm in Madras, and subsequently signed by the two other partners in Madras required an Indian stamp, although it had been stamped in England It disposes of the ruling in *Narayan Sadashiv v Bapuji Balal* (7 Bom. H. C R, A C. J. 140).

"*Property situate in British India*"—As an instrument must be stamped at the time it is made, this would appear to mean 'in British India at the time of the making of the instrument.' "Thus, for instance, if a mortgage were made of property which, at the time of the execution of the deed, was in England, that mortgage would not be subject to [illegible]

ef [illegible]

[illegible]

H C. R., O C p 180) See also sec. 18, *n*.

"*Matter or thing done or to be done*"—Where an English company, having a business in France, conveyed to a new English company (by a French deed) all their French property for a consideration of shares in the new company to be issued and allotted in England, it was held by the House of Lords that the instrument must be stamped as a 'conveyance,' under the Stamp Act 1891, s 14 (4), as it related to a 'thing to be done' in England *Commissioners* v. *Maple & Co* (L R [1908] A C 22)

It is not necessary for Courts in this country to consider whether a power of attorney executed in England, but which is intended to operate in India complies with the fiscal requirements of the Stamp Laws in England It is sufficient if it complies with the requirements of the Indian Stamp Act, and is valid for the purposes it is intended to meet *In the goods of McAdam* (23 Cal 187)

"No country takes notice of the revenue laws of another." *per* Lord Mansfield, C J, *Holman* v *Johnson* (1 Cowp 343)

Where certain receipts for money lent in France were not stamped as required by the laws of that country, and objection was taken on that ground to their admissibility, it was overruled "It has been settled, or at least considered as settled, ever since the time of Lord Hardwicke, that in a *British* Court we cannot take notice of the revenue laws of a foreign State It would be productive of prodigious inconvenience, if in every case in which an instrument was executed in a foreign country we were to receive in evidence what the law of that country was, in order to ascertain whether the instrument was or was not valid" *per* Abbott, C J, *James* v *Catherwood* (3 D & R 190).

A document which by the law of a foreign country is not admissible in evidence for want of a stamp may nevertheless be admitted in this country But where by the foreign law the want of a stamp renders a contract void, it cannot be enforced here *Bristowe* v. *Sequeville* (5 Ex 275), *supra*

So where objection was taken to an unstamped agreement which had been signed by the parties at *Surinam*, the objection was allowed to prevail subject to proof being given that in the colony all agreements must be stamped to be of any validity "I should clearly hold that if a stamp was necessary to render this agreement valid in *Surinam*, it cannot be received in evidence without that stamp here A contract must be available by the law of the place where it is entered into, or it is void all the world over." *per* Lord Ellenborough, C J, *Clegg* v. *Levy* (3 Camp 166)

The distinction appears to be that where by the laws of another country a document is for the want of a stamp invalid, the Courts will not give effect to it, but where it is only inadmissible in evidence it may be admitted if it complies with the English stamp laws See Chitty, 'Contract' (16th Ed) p 110.

But it is incumbent upon the party who objects to the validity of the agreement to prove the law requiring the stamp *Clegg v. Levy (supra)*

As to the time of stamping instruments falling under clauses (*a*), (*b*) and (*c*), see ss. 17, 19 and 18, *post*

Proviso (1) This is not a new provision though its position has been changed. It existed previously as Art. 18 of Sch. II in the Act of 1879

"*Government*" This includes the Local Government as well as the Government of India (see General Clauses Act X of 1897), sec 3 (21), (29)

Proviso (2) The second proviso which exempts sales, mortgages and other dispositions of registered ships, has been added in conformity with the law of the United Kingdom as stated in sec 721 of the Merchant Shipping Act, 1894 (57 & 58 Vic., c. 60), and in the second general exemption at the end of the first schedule of the Stamp Act, 1891 (54 & 55 Vic., c. 39)

Act XIX of 1838 relates to coasting and fishing vessels and harbour craft, and Act X of 1841 is the Ship Register Act

The exemption would, it is presumed, include Bottomry bonds, but inasmuch as Art 16 is still retained, the two provisions must be read together

"*Sale, transfer*"—See sec 2 (10), *n*

"*Ship or vessel*"—See sec 2 (20), *n*

Several instruments used in single transaction of sale, mortgage or settlement

4 (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument;

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would

chargeable in respect of any of the said instruments employed.

Note

Cf Act I, 1879, sec 6, and Act XVIII, 1869, sec 13 Cf. also 54 & 55 Vic, c 39, ss 58 (3), 61 (2), 106 (1), and 33 & 34 Vic., c 97 ss. 76, 77, 126

"*Any sale, mortgage or settlement*"—See sec 2 (10), (17), (24)

"*Instrument chargeable*"—See sec 2 (6), (14)

Sub sec. (1)—Leases have been excluded, presumably because they are provided for otherwise A lease [sec 2 (16)] would include both a 'patta' and a 'kabuliyat' under one denomination and stamp; it would also embrace both the 'application for' and 'assent to' a lease Similarly an agreement to lease which is embodied in correspondence would be sufficiently stamped if any one of the letters bore the proper stamp, sec 35 (c) Counterparts see s (6) of leases would, however, be chargeable under Art 25

This section, like sec 106 of the English Stamp Act of 1891, probably contemplates one transaction effected at the same time by several documents, not a series of documents effecting at different stages different dispositions with regard to the same property. see *Russell* v *Commissioners* (L R [1902], I K B p 152)

Where on a deed of sale of certain immoveable property there was endorsed a clause of assent by the nephew of the vendor, it was held that whether such assent was legally necessary or not, the parties must be deemed to have considered it so, and therefore to have employed the conveyance and assent to complete the transaction, and that as there were 'several' instruments, of which the conveyance was the principal one, the assent would require a one-rupee stamp if it were written on a separate piece of paper *In the matter of Hanmaps* (13 Bom 281)

A document, however, which was intended to *alter* the terms of a lease which had been duly executed, stamped, and registered eighteen days before, was held to be a *substitution* of the original lease, and as such requiring to be stamped as a lease itself; for it was 'not merely a paper which is to be taken in connection with another paper that has already been stamped in order to supply what is deficient in that paper, *i e*, such that the two must be taken together in order to arrive at the agreement of lease which was *originally* come to, but a substitution of certain new terms for the old terms'. *Byjnath Dutt Jha* v *Mussumut Putsokee Dobain* (20 W. R. 36).

Sub sec (2)—The proviso is intended to prevent the discretion allowed to parties being used for the purpose of evading stamp-duty.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters

Note.

Cf Act I, 1879, sec 7, para 1 and Act XVIII, 1869, sec 14, para 2 Cf also 54 & 55 Vic, c 39, s 4 and 33 & 34 Vic, c 97, s 8

This section is the converse of the previous one Sec 4 provides for the case of several instruments being used to record a single transaction of a specified character, while sec 5 deals with cases where several matters are embodied in a single instrument Under the Act of 1879 this and the next sections were comprised in one See ss. 6 and 14, *n*

Sec. 5 relates only to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one *In the matter of a Reference* (8 Cal 254)

"*Any instrument*"—See sec 2 (14)

"*Chargeable under this Act*"—See sec, 2 (6) and sec 3

Under the Act of 1869 it has been held that where a document falls within two distinct categories, a stamp is required for each category expressive of a distinct consideration, but where there is unity of consideration a single stamp is sufficient *Ref.* (1 Mad 133) This view has been endorsed in *Ref* (25 Mad, p 7)

Separate and distinct matters—A *zur-i-peshgee* lease with a condition for payment of rent certain, and an appropriation of any remaining proceeds for a term stated, was held to include two separate contracts,—the one of lease, for the annual payment to the lessor under all circumstances of Rs. 1,866,—the other of mortgage, as to the enjoyment by the mortgagee of the residue of the rents, after the payment of the reserved rent of Rs 1,866, as a security for the profits or interest on the amount of his money advance, each of the two contracts requiring its appropriate stamp. *Buttuldeonarain v. Sheo Golam Sahoo* (S. D A [1853] p 569).

An order of charity commissioners appointing new trustees and vesting the property in them was held to constitute two distinct things which were separately chargeable · *Hadgett v. Commissioners* (L. R. 3 Ex. D. 46)

A lease containing an agreement for the purchase of premises different from the subject-matter of the demise was held on that

chargeable in respect of any of the said instruments employed.

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A lease containing an agreement for the purchase of prem[illegible] different from the subject matter of the demise was held on, [illegible]

account to be chargeable both as a lease and an agreement *Lovelock v. Frankland*, (16 L J, Q B 182)

Where four residuary legatees of whom two were executors, by a deed transferred and released to one another shares in nine companies forming part of the residuary estate, so as to vest in each of the four a portion of the shares in each of the eight companies, and in one of them all the shares in the ninth company, it was held that the deed contained four transactions and required to be stamped as four transfers "The quesiton then is, what is the proper stamp-duty on this deed of transfer? Stating the question shortly it is, how many separate and complete transactions are effected by the deed? When we look at the substance of the matter, which is what we are bound to consider, the intention and the substantial effect of the deed is that each of the four persons entitled to these shares shall take to himself at law and in equity one fourth part, and shall convey to each of the other three his interest in the portions which are to be given to them respectively, so that each may have, under and by virtue of the instrument, a complete *legal* and equitable interest in his portion of the shares This is, in truth, four different transactions and no more The number cannot in any way be multiplied, except by assuming that if in a transaction between two persons for one consideration, several different chattels were sold say, for instance, a horse, a watch, a necklace, a pianoforte and a ring, and were conveyed by a deed, that deed would require five separate stamps, or a stamp for every piece of property conveyed" *per* Kelly, C B, *Freeman v. Commissioners* (L R 6 Ex 101)

"Where an instrument contains several distinct contracts, and as such requires several distinct stamps, it may be used as evidence of one contract for which it was stamped, although it would not be admissible as evidence in respect of the contract for which it was not stamped", *per* Peacock, C J, *Luchmeeput Singh v. Mirza Khyrut Ali* (12 W R, F B 11)

But if a lease in writing contain a contract for the purchase of goods, it cannot be given in evidence to prove the sale of the goods, although it may have an agreement stamp, unless it be stamped as a lease *Corder v. Drakeford* (3 Taunt 382)

Where an instrument consisted of two parts, the first containing a promise to repay a sum of money with interest, the second a further promise to give a quantity of grain, it was held that as a money bound, it was rightly stamped with a stamp of two annas, but

given, he could still recover the principal with interest due thereon, the stamp of two annas being sufficient to cover a bond for that amount *Chimnaji v. Kinu* (4 Bom 19)

Although principle still remains the same, it is presumed that this particular instrument would now be regarded as a bond See sec. 2 (5), (c), *ante*

Where different parts of a deed are inconsistent with each other, *e.g.*, if a part purporting to operate as a demise is inconsistent with the object and general contents of the deed, and would have the effect of defeating, and not of giving effect to, the intention of the parties, according to the approved rules of construction effect should be given to that part which is calculated to carry into effect the real intention, and that part which would defeat it should be rejected *Walker* v *Giles* (6 C B 662)

"The expression in the instrument of that which the law implies has no effect as to the necessity of a further stamp, '*expressio eorum quae tacite insunt nihil operatur*'" *per* Parke, B, *Wroughton* v *Turtle* (11 M & W p 570)

Matters accessory to the main object —"There is no better established rule as regards stamp-duty than that all that is required is that the instrument should be stamped for its leading and principal object, and that this stamp covers everything accessory to this object" *per* Martin, B, *Limmer Asphalte Paving Co* v *Commissioners* (L R 7 Ex 211)

If an instrument were chargeable as a conveyance, a covenant to pay £6,000, the balance of the purchase-money, would be a direct accessory to the main object of the instrument *Id*

Where a bond was written upon one piece of stamped paper, but the contract of the principal came first and was signed by him, and next after the signature followed the contract of the surety signed by the latter, it was held, notwithstanding the apparent separation of the clauses, that the contract of the surety being incidental and accessory to that of the principal, and in respect of one and the same sum or consideration—the leading object or character of the document being the securing of that sum—the bond and guarantee formed but one transaction *Dowlatram Harji* v *Vitho Radhoji* (5 Bom 188)

The test of a multifarious deed will always be whether it is in effect one indenture or several Where a contracting party for the purchase of land agreed that it should be surrendered not to himself, but to the use of a third person by whom the purchase-money was to be advanced, and who was to hold it as security for his advance, it was held that the instrument was "confined to the carrying out of a single transaction—the purchase of the estates and securing of the purchase-money," and was therefore not within the statute, the object of which was "to prevent the evasion of duty by using one piece of parchment for the purpose of making several distinct deeds" · *Rushbrook* v. *Hood* (5 C B 131)

account to be chargeable both as a lease and an agreement. *Lovelock* v. *Frankland*, (16 L. J, Q B 182)

Where four residuary legatees of whom two were executors, by a deed transferred and released to one another shares in nine companies forming part of the residuary estate, so as to vest in each of the four a portion of the shares in each of the eight companies, and in one of them all the shares in the ninth company, it was held that the deed contained four transactions and required to be stamped as four transfers "The question then is, what is the proper stamp-duty on this deed of transfer? Stating the question shortly it is, how many separate and complete transactions are effected by the deed? When we look at the substance of the matter, which is what we are bound to consider, the intention and the substantial effect of the deed is that each of the four persons entitled to these shares shall take to himself at law and in equity one fourth part, and shall convey to each of the other three his interest in the portions which are to be given to them respectively, so that each may have, under and by virtue of the instrument, a complete legal and equitable interest in his portion of the shares This is, in truth, four different transactions and no more The number cannot in any way be multiplied, except by assuming that if in a transaction between two persons for one consideration, several different chattels were sold say, for instance, a horse, a watch, a necklace, a pianoforte and a ring, and were conveyed by a deed, that deed would require five separate stamps, or a stamp for every piece of property conveyed" *per* Kelly, C B, *Freeman* v *Commissioners* (L R 6 Ex 101)

"Where an instrument contains several distinct contracts, and as such requires several distinct stamps, it may be used as evidence of one contract for which it was stamped, although it would not be admissible as evidence in respect of the contract for which it was not stamped", *per* Peacock, C J, *Luchmeeput Singh* v *Mirza Khyrat Ali* (12 W R, F B 11)

But if a lease in writing contain a contract for the purchase of goods, it cannot be given in evidence to prove the sale of the goods, although it may have an agreement stamp, unless it be stamped as a lease *Corder* v *Drakeford* (3 Taunt 382)

Where an instrument consisted of two parts, the first containing a promise to repay a sum of money with interest, the second a further promise to give a quantity of grain, it was held that as a money-bound, it was rightly stamped with a stamp of two annas, but that as the last part amounted to an agreement, and as such required a stamp of eight annas, the document itself should have such a stamp It was held also, that if the promisee chose to abandon his claim for grain, he could still recover the principal with interest due thereon, the stamp of two annas being sufficient to cover a bond for that amount *Chimnaji* v *Rama* (4 Bom 19)

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And so also where by a single deed certain lands were conveyed on certain trusts, and a declaration of similar trusts was also made as to certain Government stocks, it was held that one stamp was sufficient *Doe* v *Fereday* (12 A. & E 23)

Where an instrument of transfer of shares in a company contained a covenant to abide by and perform all the rules and covenants contained in the company's deed of settlement in respect of the shares, it was held that the covenant was a very material incident to the conveyance, and that no additional stamp was necessary *Wolseley* v *Cox* (2 Q B 321)

And so in the case of a surrender of a lease for lives, in consideration of £120, and of a new lease to be granted for the life of the lessee, it was held that the agreement for a new lease was part of the contract *Doe* v *Phillipps* (11 A & E 796).

By a certain document a zamindar leased some land in a village to cultivators at a rent of Rs 365 per annum in cash, and of certain cart-loads of straw and of grass for eight years as zamindari dues. The lessees by the deed hypothecated certain other property for the purpose of securing the payment of the agreed rent and for the performance of the other engagement It was held that the document *could not be regarded as an instrument comprising or relating to* several distinct matters The matter to which the instrument related was the terms upon which the lessors let the land and the lessees took the holding The mortgage was not a distinct matter from the lease. It was as much the matter of the lease as an ordinary covenant to pay rent would be part of the matter of the lease: *Ref.* (17 All 55)

A conveyance must be taken to include the usual covenants for title and the stamp for the conveyance covers the whole Such covenants cannot be regarded as constituting separately an indemnity bond on which duty could be charged The section shows that where a document falls within two distinct categories, a stamp for each category is only required where there is what is called a distinct consideration. Here there was unity of consideration, and the document with the contractual words fulfilled the definition of a conveyance, and without them would not *Ref* (1 Mad. 133) And see *Damodar Gangadhar* v *Vamanrav Lakshman* (9 Bom. 435).

Where certain terms of agreement were proposed in a letter, and the person to whom it was sent agreed to the terms by a memorandum written and signed by him at the foot of it, and subsequently his father wrote on the back of the letter a guarantee for performance of the agreement, it was held that one stamp was sufficient, as the whole of the instrument containing the guarantee must be taken together as forming one transaction · *Steels* v *Lulford* (8 J B Moore 2)

And see *Dowlatram Harji* v. *Vitho Radhoji* (5 Bom. p. 193; *Kyd* v. *Mahomed* (15 Mad. 150).

And so also an option to renew in a lease is ancillary to, and forms part of, the consideration for entering into the lease. Such an instrument contains but one contract, a demise, and cannot be regarded as comprising or relating to several distinct matters (*Ref* 25 Mad. 3).

By an indenture in the form, and containing the usual covenants of, a lease, *A* demised premises to *B*, and *B* and *C* covenanted to pay the rent, but *C* was not otherwise referred to in the instrument. In an action against *C* on the covenant to pay rent, it was held that the instrument was properly stamped though stamped as a lease only. "If this, covenant had introduced matter no way connected with the demise but wholly distinct and independent, it might then have been said that the plaintiff could not benefit by such a stamp as was affixed to this indenture But that was not the case The objection therefore cannot prevail " *per* Lord Tenterden, C J "The lease was the principal, to which this covenant was an accessory " *per* Littledale, J, *Price* v. *Thomas* (2 B & Ad 218) See also *Pratt* v *Thomas* (4 C. & P 554)

But it would be otherwise if the guarantee were by a third party who did not join in the principal covenant; *Wharton* v. *Walton* (7 Q. B. 474)

A bond executed by *A* as principal and by *B* as surety, whereby they were jointly and severally liable, contained an additional obligation by *A* to indemnify *B* against all loss incurred as surety It was held that the whole appeared to have been one transaction, the agreement to indemnify being no doubt the consideration which induced *A* to become a surety, and that the bond was properly stamped as one instrument *Annandale* v *Pattison* (9 B & C 919) See also *Dowlatram Harji* v *Vitho Radhoji* (5 Bom 188)

In the case of a demise for two years, at a certain rent, with an option to the lessee to purchase, during the term, for a given sum, a further lease for two lives, it was held that the contract for sale was sufficiently connected with the consideration for the lease to render a further stamp unnecessary *Worthington* v. *Warrington* (5 C. B 635) And see *Phillips* v *Phillips* (11 Ad & E 796); *Muller* v *Trafford* (L R. [1901] 1 Ch p 60)

Similarly, where the consideration for a lease consists partly of rent to be paid each month, and partly of a sum equal to a month's rent paid in advance and to be repaid at the end of the lease, the instrument relates to one matter only *Ref.* (26 Mad. 473).

And so an instrument setting forth (1) that *J* and *S* relinquished their right to certain property in favour of *E*., (2) that *E*. was to

discharge certain debts, and (3) that *E.*, was to pay *J.* and *S* an annuity, was held to be chargeable as a release only "The point for determination is whether stamp-duty is chargeable in respect of stipulations (2) and (3)? The document is executed by Jagannath and Somnath, but not by Eknath The provisions, therefore, purporting to be in favour of Jagannath and Somnath are a mere recital of the consideration moving from Eknath No interest in their favour is created by the document, which therefore, so far as stipulations (2) and (3) are concerned, cannot be regarded as an instrument chargeable with stamp-duty" *per* Wedderburn, J., *Eknath v. Jagannath* (9 Bom. 417)

An indenture by which an apprentice was bound for seven years, to serve *A B* for the first four years, and his own father for the last three, to learn two different trades, was held to require only one stamp, the whole being one transaction *Rex v. Inhabitants of Louth* (8 B & C 247)

Numerous parties —"The rule upon this subject is thus correctly laid down in Phillips on Evidence (Vol I, p 445), 'If the interest of the parties relates to one thing which is the subject matter of the instrument, or in other words, if the instrument tre the separate interests of several, and there is a community of the same subject matter as to all parties, then a single stamp will be sufficient but where the parties have separate interests in several subject matters, there ought to be a separate stamp for each party" *per* Jervis C J, *Dee v. Tidbury* (14 C B 304)

Upon a purchase from persons having separate interests in an estate (*e g* tenants in common, or tenant for life and remainderman), the agreement, if so worded as to be a contract for the entire estate, would seem to be subject only to a single duty but if, on the contrary, it were so worded as to amount to separate interests in the property so as to give to each vendor a right to enforce the agreement in respect of his own particular interest, it is conceived that separate stamps would be requisite Dart, 'Vendors and Purchasers' (7th Ed), p. 263

Community of interest —An agreement by several for a subscription to one common fund, such as for making a wet dock, though several as to each subscriber, needs only to be stamped as one instrument *Davis v. Williams* (13 East 232)

And so an agreement relating to the prize shares of different persons, though several as to the share of each, yet as payable in respect only of one entire fund, was held to be chargeable with one stamp *Baker v. Jardine* (*Id* p 235, n)

Likewise where a power-of-attorney was executed by all the members of a mutual insurance club; inasmuch as there was "a community of purpose actuating all the members," although there

might not have been entire community of interest: *Allen* v. *Morrison* (8 B & C 565). See also *Ref.* (9 Mad. 358); *Ref.* (15 Mad. 386).

Where three persons bound themselves that, in consideration of *A's* discharging a debt due from *B* to *C*, and costs thereon, each of the three would severally pay £50 and one-fourth of such costs, and give a bond bill or note for his own proportion, it was held that this was only one transaction and required only one stamp *Ramsbottom* v *Davis* (4 M. & W. 584) See also *per* Mansfield, C J., in *Bowen* v *Ashley* (1 B. & P, N R 274), and *per* Gibbs, C J, in *Goodson* v *Forbes* (1 Marsh. 525)

An indenture by which several persons released and conveyed to others their respective estates and interests, acquired by encroachments upon a common, was held also to require one stamp, there being community of interest in the subject-matter of the conveyance in all the conveying parties *Doe* v *Tidbury* (14 C B 304)

So also where three persons who were entitled in all to sixty shares in an incorporated company *A* to thirty, *B* to twenty and *C* to ten, conveyed them jointly by one deed "Such a deed, no doubt, if it is executed by the parties, conveys the separate interest of each It does not require three deeds or three stamps, and the *ad valorem* stamp is correctly calculated upon the whole *per* Pollock, C. B, *Wills* v *Bridge* (18 L J Ex. 384)

Where a lease for 999 years recited the title and a succession of agreements representing various transactions relating to the properties comprised therein, and the parties to these transactions also signed the lease by way of concurrence, it was held that this did not alter the character of the instrument so as to convert it into a multifarious deed *In re Parasea Collieries, Ld* (37 Cal 629)

And so an affidavit jointly sworn by two persons for a common purpose was held to require a single stamp *Reversionary Interest Society* v *Commissioners* (22 T L R 740)

Independent Interests—In the case of an instrument containing a written contract of demise with several operations in respect to different tenants, who sign it for different estates at the different rents set against their signatures, there should be a different stamp for each contract, although the same terms of agreement apply to all One stamp has been only held to be sufficient upon an instrument affecting the separate interests of several, where there has been a community of the same subject-matter as to all the parties *Doe* v *Day* (13 East. p 246) *Rex* v *Reeks* (2 Stra 716).

Where sixteen persons borrowed a quantity of rice from the plaintiff and executed a bond for the debt, showing how much rice had been borrowed by each of them, while they did not bind themselves to repay the entire debt jointly and severally, it was held

that the instrument must be regarded as comprising sixteen distinct contracts of loan for the several quantities of paddy mentioned, and therefore, as including sixteen distinct matters *Shabudin v. Hirnak Rajnak* (10 Bom. 47).

Agreements with two or more raiyats not jointly interested in the same land for the purchase or lease of their lands are distinct agreements requiring to be separately stamped *Ref* (24 Mad. 176)

Instruments coming within several descriptions in Schedule I

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties·

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Note.

Cf Act I, 1879, sec 7, para 2, and Act XVIII, 1869, sec. 14, para 1 Cf also 54 & 55 Vic c 39, s 72, and 33 & 34 Vic. c. 97, s 93

In the Act of 1879 this section was combined with the previous one and treated as an exception to it The meaning of the two provisions is this If a document be in reality one instrument, though different names are given to it, section 6 will apply, but if in fact it comprises several instruments, then section 5 will apply See sec 5, *n*

"*A counterpart or duplicate*"—See Art 25

"*Any instrument chargeable with duty*"—See sec 2 (6), (14)

In the case of an instrument, partly a lease and partly a usufructuary mortgage, where in consideration of a former loan being allowed to continue, and of an additional loan being made by *H* to R, R granted a lease of the properties for twenty years upon terms which secured to the lessees the repayment of the whole sum with interest by yearly instalments, and at the same time secured to *K.* a very substantial share in the usufruct of the property, it was held that the loan was the consideration for the lease, and the lease the consideration for the loan, and that neither part of the arrangement would have been complete without the other, and that the instrument being one which answered two of the descriptions in the first schedule was chargeable as a mortgage only: *In the matter of a Reference* (8 Cal. 254)

Where an instrument contained (1) an agreement for the delivery of *rab* or sugar with a provision for damages in case of breach of the contract to deliver, and (2) a hypothecation-bond of certain moveable property, *viz*, the produce of a sugarcane field, as security for the payment of any damages that might become recoverable by way of compensation for non-delivery, it was held that the document fell within two definitions, *viz*, that of a bond and also of a mortgage-deed, and that being of this double character, it fell within the principle recognised by sec 7, (Act I of 1879) *In the matter of Gajraj Singh* (9 All 585)

Where one of the clauses of an instrument by which one party to the instrument bound himself, in the event of a breach on his part of any of the conditions thereof to pay the other party a penalty of Rs 5,000 was regarded as a bond, and whereas the instrument would otherwise have been chargeable as an agreement, it was held that it was chargeable under sec 7 with the duty leviable on a bond for Rs 5,000, *i e* with the higher of the two stamp-duties · *Ref.* (2 All 654).

And so where an agreement, though drawn in the form of a declaration of trust, purported to transfer the whole of the shares in a company, which was being voluntarily wound up, to a new company in pursuance of a contract of sale, it was held that the instrumen was chargeable with *ad valorem* duty as on a conveyance on sale *Chesterfield Brewery Co* v *Commissioners* (L R. [1899] 2 Q. B 7).

Similarly, where an instrument, in consideration of moneys advanced by a bank purported to create a trust in favour of the bank in respect of the "stock-in-trade, goods, chattels and effects" of a certain business, it was held that the document in question, was in fact a 'mortgage-deed' and must be stamped accordingly: *Board of Revenue* v *Orr* (19 Mad. L J. 613)

When an instrument falls within two descriptions and the Crown claims the higher rate, it is no answer to say that a lower rate is also chargeable · *per* Lord Loreburn, L. C, *Speyer Brothers* v. *Commissioners* (L. R. [1908] A. C. 92)

Policies of sea-insurance

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894), shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

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7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894), shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or underwriters, and the amount or amounts insured

(4) Where any sea-insurance is made for or upon a voyage and also for time or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time

Note.

Cf Act I, 1870, sec 7A, and Act VI, 1894 Cf also 54 & 55 Vic, c 39, ss 93, 94 [illegible] 51 & 52 Vic, c [illegible], ss 7 8, 11, and 1 Ed VII, c 7, s 11, 3 Ed VII, c 46, s [illegible]

The first three sub sections correspond with sec 93, and the fourth with sec 94 of the English Stamp Act, 1891

Sub sec (1) —This means that the contract in order to be valid must be in writing and drawn up in a formal document, commonly known as a sea policy, as defined in sec 2 (20)

The Merchant Shipping Act, 1894 (57 & 58 Vic, c 60) sec 506 is as follows —"An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this part of this Act shall not be invalid by reason of the nature of the risk" The provisions by which the liability of owners is limited are ss 502, 503, 508

A 'contract for sea insurance' [see s 2 (20)] is not chargeable as a 'policy of sea-insurance' under Art 47A unless it amounts to a policy within the meaning of this section Consequently the bills-of-lading ordinarily employed by the Inland Navigation Companies, and commonly known as the 'red and blue bills-of-lading,' whereby for an additional freight the companies insure shippers against loss, are not so chargeable *In the matter of a Reference* (30 Cal 565)

Sub sec. (3)—A policy of marine-insurance upon a ship for a period of twelve months contained the following clause "Should the vessel be at sea or abroad on the expiration of this policy, it is agreed to hold her covered until arrival at her port of final destination in the United Kingdom or on the continent of Europe at a *pro rata* daily premium" On the expiration of the twelve months the ship was abroad, and on her voyage home was lost. It was held that the policy was one entire contract of insurance for a 'time exceeding twelve

onths,' and as such was in contravention of sec. 94 of the Stamp Act of 1891; and further that even if the continuation clause could be regarded as a separate insurance, either for a voyage or time, it did not 'specify the particular risk or adventure' insured sufficiently to satisfy the requirements of the section, *Royal Exchange Assurance v. Vega* (L. R. [1902] 2 K. B. 384). See also *Charlesworth v. Faber* (5 Com. Cas. 408).

The limitation of twelve months provided by the English Act (s. 93) has been relaxed by 1 Ed. VII, c. 7, s. 11 and 3 Ed. VII, c. 46, s. 8. The former Act provides against the contingency of the risk extending beyond the period of twelve months, by the introduction of a 'continuation clause' which when duly stamped has the effect of a new contract. The latter Act provides against a similar contingency arising out of a ship being under repair or construction.

Sub-sec. (3).—A 'sea policy' must also conform to the requirements of this provision. Where a contract for sea-insurance did not specify among other things the sum or sums insured it was held to be invalid. "No one can tell what amount may be declared upon this document. The only limit to be found within its four corners is that the underwriters are not to be called upon to pay more than £4,000 as regards any one ship. It is perfectly impossible upon the face of this document to say that it specifies the sum or sums insured; and therefore this contract for sea insurance is not expressed in a policy, if it be a policy at all, which satisfies the requirements of sec. 93, sub-sec. 3, of the Act of 1891, and is invalid." *per* Smith, L. J., *Home Marine Insurance Co. v. Smith* (L. R. [1898] 2 Q. B. p. 356). See also *Scandinavia Reinsurance Co. v. Da Costa* (L. R. [1911] 1 K. B. 137).

As to the general practice see *per* Blackburn, J., *Xenos v. Wickham* (14 C. B., N. S. p. 453).

Sub-sec. (4).—This means that a policy for a 'voyage' and 'time' is chargeable with two duties. See sec. 5.

Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a 'voyage policy.' A contract for both voyage and time may be included in the same policy. Marine Insurance Act, 1906 (6 Ed. VII, c. 41) s. 25.

A 'time policy' is one by which a ship is insured for a certain period of time, instead of for a certain voyage. Such an insurance is effected in consequence of the ship being intended to be employed in adventures, which from their nature it would be inconvenient or even impossible to designate by local termini: Arnould.

'Ship' shall include every description of vessel used in navigation not exclusively propelled by oars. 'Vessel' shall include any ship or boat or any other description of vessel used in navigation: General Clause Act (X of 1897), sec. 3 (51), (56).

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities' Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of [one] per centum on the total amount of the bonds, debentures or other securities issued by it and such bonds, debentures or other securities need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, subdivision or otherwise.

Bonds, debentures or other securities issued on loans under Act XI, 1879.

(2) The provisions of sub-section (1), exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the Governor-General in Council.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

Note.

Cf. Act I, 1879, sec. 7 B, and Act XIII, 1897. Cf. also 62 & 63 Vic. c. 9, s. 8; and 7 Ed. VII, c. 13, s. 10.

This provision was originally introduced by Act XIII of 1897 to give facilities to local authorities for issuing debentures upon payment of composition duty. A similar provision is contained in the English Finance Act, 1899, s. 8.

The duty has been raised from eight annas to one per centum by Act VI of 1910.

Sub-sec. (1) —'Local authority' means a Municipal Committee, district board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund General Clauses Act (X of 1897) sec 3 (28) But the 'local authorities' empowered under the Act are those specified in the Schedule to the Act of 1914

"*Any other law for the time being in force.*"—Since the Act of 1879, which was amended in 1885, two other Acts came into force, *viz*, Act XII of 1897 (Emergency), and Act III of 1904 The latter was amended by Acts I of 1905, V of 1907, and VIII of 1908, and the former by Act XI of 1912 All these eight Acts are consolidated and embodied in the Local Authorities Loans Act, 1914

Sub-sec. (2) —The 26th March, 1897, is the date of the amendment.

Sub sec. (3).—This is taken from the English Finance Act, 1899

Power to reduce, remit or compound duties

9. The Governor-General in Council may, by rule or order published in the *Gazette of India*,—

(*a*) reduce or remit whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by, or in favour of, any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities

Note.

Cf Act I, 1879, sec. 8, and Act XVIII, 1869, sec. 16

Cl. (a). —For examples of the exercise of these powers see *Appx. B.* The former provision for cancelment or variation of such orders is omitted as unnecessary General Clauses Act, (X of 1897), sec. 21.

Cl. (b).—See sec 8, *ante*

B.—Of Stamps and the mode of using them.

Duties how to be paid

10 (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(*a*) according to the provisions herein contained; or,

(*b*) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

(2) The rules made under sub-section (1) may, among other matters regulate —

(*a*) in the case of each kind of instrument—the description of stamps which may be used,

(*b*) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(*c*) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written

Note.

Cf Act I, 1879, s. 9 Cf also 54 & 55 Vic., c. 39, s 2; and 33 & 34 Vic., c. 97, s 6

Sub sec (1)—See ss 39, 40, 41 and ss. 16 and 42

Sub-sec (2).—For these rules see *App. A*

Use of adhesive stamps

11. The following instruments may be stamped with adhesive stamps, namely:—

(*a*) instruments chargeable with the duty of one anna [or half an anna], except parts of bills of exchange payable otherwise than on demand and drawn in sets,

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India,

(*c*) entry as an advocate, vakil or attorney on the roll of a High Court;

(*d*) notarial acts; and

(e) transfers by endorsement of shares in any incorporated company or other body corporate.

Note.

Cf Act I, 1879, sec. 10, and Act XVIII, 1869, sec. 5. Cf also 54 & 55 Vic., c. 39, s 7, and 45 & 46 Vic, c 72, s 13

These provisions were introduced for general convenience They are a concession to the public, and it is essential that the directions as to cancellation contained in the next section be strictly observed The penalties for non-observance are necessarily severe (see ss 12 (2) and 63) As to instruments other than those specified in sec 11, see Stamp Rules (*Appx A*) As to the use of adhesive stamps see the same. Rule 14 permits the use of postage stamps

The words ' or half an anna' have been introduced by Act V of 1906.

Cl. (a)—A '*hundi*' for a sum of Rs 380, payable twenty one days after date, *i e*, otherwise than on demand, cannot be stamped with an adhesive stamp, because the stamp required is more than one anna *Devaji v Ramakrishnah* (2 Mad 173)

A Bill of Exchange for Rs 500 stamped with six one anna adhesive stamps, being payable otherwise than on demand was held to be insufficiently stamped *Radhakant Shaha v Abhoycharn Mitter* (8 Cal. 721)

Cl (b)—The words ' drawn or made out of British India' apply to the entire clause *Id*

12 (1) (*a*) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again, and

Cancellation of adhesive stamps

(*b*) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his

with the true date of his so writing, or in any other effectual manner.

Note.

Cf Act I, 1879, sec 11, and Act XVIII, 1869, sec 33 Cf also 54 & 55 Vic, c 39, s 8, 45 & 46 Vic, c 72, s 14, and 33 & 34 Vic. c. 97, s 24

"*Instrument chargeable with duty* —See sec 2 (14) and sec 3

"*Executed*"—See s 2 (12)

Sub sec (1)—As the use of adhesive stamps is permissive the directions as to cancellation are necessarily peremptory, and the penalties serious (see s 11, *p*)

And so the Privy Council have held that "the words 'without being duly stamped' would include not only cases where there was no stamp at all, or when the stamp was an insufficient one, but where, by inadventure or accident the stamp had not been properly cancelled" *per* Sir Richard Couch, *Allen* v *Meera Pullay* (L. R 7 App Cas p 175)

Cl (a)—This applies to cases in which the instrument chargeable with duty may be stamped after execution The receipt to a salary bill is an instrument which should be stamped before or at the time of execution, and therefore not contemplated by this clause *Queen-Empress* v *Rahat Ali Khan* (9 All 210)

"*So that it cannot be used again*" —Where a document bore a stamp which was without any mark of cancellation except a portion of the first letter of the defendant's signature consisting of a slightly curved line, it was held that whatever may have been intended by the small ink line upon the right side of the stamp, it did not effect such a cancellation of the stamp as is prescribed by the section, and the document was accordingly held to be unstamped *Ralli* v *Caramalli Fazal* (14 Bom 102)

And where two parallel lines were drawn across a one anna adhesive stamp, which was affixed to a *hundi*, it was held to be equally ineffective, because mere lines would not effect the purpose in view, which is that the cancellation should be such that the stamp cannot be used again. The *hundi* was consequently not duly stamped, and no suit would lie on it: *Virbhadrapa* v. *Bhimaji* (28 Bom 432)

Where, however, a number of proxies were stamped with adhesive stamps which required to be cancelled so as to render the same "incapable of being used for any other instrument," and the cancellation was effected in various ways, *e.g.*, some with a name or part of it written across, others with only the date so written, and a few with only lines or a cross, with neither the signature nor the date, it was held that they were properly and effectively cancelled so as to prevent their being used again: *M'Mullen* v. *Sir Alfred Hickman Steamship, Ld.* (71 L. J., Ch. 766)

Cl. (b).—This is intended to meet the cases in which the stamp is affixed before the instrument is executed (or as in the case of the cheques contained in the cheque-books issued by some banks to their customers) before the instrument is completely drawn up. In such cases the person first executing the instrument must cancel the stamp.

Reading clauses (*a*) and (*b*) together and with sec. 17, it is a fulfilment of the requirements of the law, if the stamp is affixed and cancelled at the time of execution, or if having been at any time previously affixed it is cancelled at the time of execution. Until delivery a '*hundi*' is not clothed with the essential characteristics of a negotiable instrument. Accordingly, if the instrument at the time of delivery (which formally completed its legal character) was stamped, and if the cancellation of the stamp took place at that time as part of the same transaction, it would be sufficient. *Bhawanji Harbhum* v. *Devji Punja* (19 Bom 635).

The cancellation of the stamp apparently should be done by the person affixing it, but as it is a mere mechanical operation to prevent the stamp being used again, it will be sufficient if done by his directions express or implied. Accordingly the cancellation of the stamp would not be invalidated if done at the time of execution by the *payee* of the '*hundi*' with the authority of the *drawer*. *Id* (p. 638).

In the absence of evidence to the contrary it may be inferred that the stamp on a document was duly affixed and cancelled: *McMullen* v. *Sir Alfred Holman Steamship, Ld* (71 L. J., Ch. 766); *Bradlaugh* v. *De Rin* (18 L. T. 904), *Marc* v. *Rouy* (31 L. T. 372).

Sub-sec (2).—The consequences of omitting to cancel an adhesive stamp are serious (see sec. 35, *n*). But there are further penalties. Failure to cancel a stamp in accordance with the provisions of this section is punishable under sec. 63.

Sub sec (3).—The method here suggested for effecting cancellation is not obligatory. It is only intended as a guide. *Virbhadrapa* v. *Bhimaji* (28 Bom. 432).

Any other effectual manner."—These words have been added to make it clear that the mode indicated for cancelling an adhesive stamp is directory only, and is not intended to exclude other effective modes of cancellation. They have effected no change in the law.

Cancellation may be effected by stamping as well as by writing. And where a further question was raised as to whether the cancellation was by a proper person, Blackburn J. saw no reason why the matter should not be settled by having the bills cancelled in open Court at any moment before verdict: *Vale* v. *Michael* (30 L. T. 463).

As to cancellation of impressed labels, see Stamp Rules (*App.* *A*). As to impressed sheets, see sec. 13.

13 Every instrument written upon paper, stamped with an impressed stamp, shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument

Instruments stamped with impressed stamps how to be written

Note.

Cf Act I, 1879, sec 12 Cf also 54 & 55 Vic, c 39, s 3 (1); and 33 & 34 Vic, c 97, s 7 (1)

"*Impressed stamp*"—See sec 2 (13) and Rule 6 (*Appx A*)

"*Instrument*"—See sec 2 (14) This word, as employed in this section, is used in more senses than one In the first and last occasions it obviously means the matter which constitutes a document, whereas, in the second it signifies the material on which it is recorded, or the document itself

"*Paper*"—See sec 2 (18)

This section must be read with sec 15 It seems to contemplate two objects—(1) that the stamp should not be defaced or made illegible; (2) that the writing should not be so distant from the stamp as to admit of its being used again for another instrument for instance, by cutting off the part of the paper previously written upon, and writing a fresh instrument on the portion left blank In ordinary legal parlance, when the face of a deed or document is mentioned, no particular side or sheet of the parchment or paper, on which the deed or document is written, is thereby indicated Ordinarily, if the instrument be of sufficient length, both sides of the paper are written upon The section does not say that the instrument must commence on the side on which the stamp is impressed, or that only one side may be written upon

"The imposition of such excessive and minute details would be pitfalls to the unwary, and would by frequently invalidating documents press harshly upon the illiterate classes and overthrow thousands of honest transactions without producing any such advantageous result in the form of revenue to the State as would compensate it for the discontent which would be occasioned The legislature has avoided such stringent details, and seems to us to have satisfied itself by legislating against defacement of the impressed stamp and against such a mode of penning the document as would admit of that stamp being used for, or applied to, any other document." *per* Westropp, C. J, *Dowlatram Harji* v. *Vitho Radhoji* (5 Bom p 194).

And see also *Ref* (7 Mad 176)

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written.

Only one instrument to be on same stamp

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Note.

Cf Act I, 1879, sec 13 Cf also 54 & 55 Vic, c 39, s 3 (2); and 33 & 34 Vic, c 97, s 7 (2)

There is a distinction between this provision and sec. 5 Sec. 5 prohibits separate and distinct matters being embodied in one instrument; whereas sec 14 prohibits the use of one stamped paper for more than one purpose See sec 6, *n*

"*Duly stamped*"—See sec 2 (11)

"*Instrument*"—See ss 2 (14) and 3, *n*

"*Chargeable with duty*"—See ss 2 (6), and 3

"*Written upon stamped paper*"—See sec 2 (18), *n*

An endorsement of transfer, written on a money-bond itself duly stamped, requires to be stamped If it is not duly stamped and is chargeable with duty, it does not fall within the exemption allowed by the proviso But inasmuch as the section forbids a second instrument being written upon a paper on which one instrument has been already written, it would be in contravention of the section and consequently deemed to be unstamped under sec 15, and the provisions which apply to all unstamped instruments, whether actually or only constructively so, must come into operation. *Prallad Lakshmanrav* v. *Vithu* (17 Bom 687) This explains *In the matter of Hanmapa* (13 Bom 281)

For transfers by endorsement which are exempt from duty see Art. 62; and for receipts see Art 53 (*a*)

Where a second instrument purporting to be a 'release' was written on the back of a 'conveyance,' which was itself properly stamped, it was held that the second instrument did not invalidate the 'conveyance,' and that the 'release' could be validated by payment of the proper stamp duty and penalty. *Ref.* (11 Mad 40)

13. Every instrument written upon paper, stamped with an impressed stamp, shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument

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For transfers by endorsement which are exempt from duty see Art 62; and for receipts see Art 53 (a)

Where a second instrument purporting to be a 'release' was written on the back of a 'conveyance,' which was itself properly stamped, it was held that the second instrument did not invalidate the 'conveyance,' and that the 'release' could be validated by payment of the proper stamp duty and penalty: *Ref* (11 Mad 40)

Where a document, purporting to be a bond, contained first the contract of the principal and his signature, and then the contract of the surety and his signature, it was held that they formed but one instrument, notwithstanding the apparent separation of the clauses. "The contract of the surety being incidental and accessory to that of the principal, and in respect of one and the same sum or consideration, the leading object or character of the document being the securing of that sum," it was held not to fall within the section: *Dowlatram Harji* v *Vitho Radhoji* (5 Bom 188).

Where certain terms of agreement were proposed in a letter, and the person to whom it was sent agreed to the terms by a memorandum written and signed by him at the foot of it, and subsequently his father wrote on the back of the letter a guarantee for performance of the agreement, it was held that one stamp was sufficient, as the whole of the instrument containing the guarantee must be taken together as forming one transaction *Stead* v *Liddard* (8 J B Moore, 2).

Where an agreement is contained in a series of letters, it is sufficient to have any one of them stamped *Id* p 7. See also *Peale* v. *Dicken* (1 C M & R. 422), *Boyd* v. *Krieg* (17 Cal. 548). And see sec 35 (c)

"*Provided that, &c*"—The only endorsements contemplated by the proviso are (1) one made for the purpose of transferring a right created by the instrument, and (2) one intended to operate as an acknowledgment of money or goods referred to therein In both cases the execution of the instruments contemplated must have preceded the endorsement Where however an endorsement had been made before or at the time the instrument was executed, it was held that it must be taken to be part of it *Hartley* v *Wilkinson* (4 Camp. 127). And if so incorporated it might even operate to change its character *Leeds* v *Lancashire* (2 Camp. 205), *Cholmeley* v. *Darley* (14 L J, Ex 328).

Where a widow granted to a stranger an annuity for religious purposes and subsequently adopted a son, and the son after his adoption by way of ratifying the gift endorsed on the instrument the words "I consent to act according to this *sanad*," it was held to be a valid deed of gift requiring only a single stamp "When the lady adopted a son, her gift *in futuro* became inoperative. The donee now claims under a gift from the adopted son, and if that instrument [illegible]-deed. The [illegible] instrument [illegible] 4).

Alteration of documents.—An alteration in an executed instrument converts it into a new and different instrument which therefore requires a fresh stamp. "If a deed, well and sufficiently made in its

creation, shall be afterwards altered by rasure, interlining, addition, drawing a line through the words, though they be still legible, or by writing new letters upon the old in any material place or part of it, either by the party that hath the deed, or any other whomsoever, unless the alteration be by him who is bound by the deed (for he shall not take advantage of his own wrong), or by his consent, the deed has lost its force and is become void " Shep Touch 68

The same rule applies equally to other written contracts, and to bills and notes *Master* v *Miller* (4 T R 320)

Where a deed of transfer of shares had been executed by the seller, but before execution by the intended purchaser the latter's name was struck out from the deed and a new purchaser's name substituted, and the deed thus altered was re-executed, it was held that the deed was so far complete, that it could not operate as a conveyance without a new stamp *London and Brighton Railway* v. *Fairclough* (2 M & G 675)

And so in the case of an agreement to assign a lease, where the parties agreed by an endorsement to enlarge the time for performance, it was held to be a fresh agreement which required a fresh stamp: *Bacon* v *Simpson* (3 M & W 78)

But it would be otherwise where a deed was not complete and all the parties consented to have it rectified before it had passed into the hands of the parties who were to take under it "The question is whether the execution of the deed was *in fieri*, or whether it was *factum* and finished. All the parties were present for the purpose of executing this deed. One party had just executed, and immediately on an objection being taken, and before the other contracting parties had executed, it is agreed to strike out the clause which had given rise to the objection; that was done accordingly, and the party re-executes, and the other parties execute This must be considered, I think, as one transaction; and on the ground that there was no final consummation of the execution before the deed was altered, I am of opinion that a fresh stamp was not necessary:" *per* Vaughan, B, *Jones* v. *Jones* (1 C. & M. p 724).

"These laws are intended to provide a revenue by requiring stamps when a deed is perfected; but to make it perfect, not only the delivery by the party conveying, but the acceptance by the party to take, is necessary. The short ground for my opinion is that, at the moment of execution, an alteration was required by one party and acquiesced in by the other; and I think the deed was not so far executed as to make a new stamp necessary." *per* Bayley, B (*Id.* p. 723).

And where a deed which had been prepared and executed in the usual form was handed over to the attorney of the party who had executed it to be made use of when necessary, and before it was used

was altered and re executed, and then delivered, it was held that no fresh stamp was necessary "The objection taken at the trial was that the stamp, having become *functus officio* by the first execution, could not be again used. No doubt if the deed had, in the first instance, been so completely executed, as that the stamp was once occupied, no further use could have been made of it, and a re-execution would have required a fresh stamp But so long as it remained *in fieri* it was not completely executed, and the stamp was not occupied The deed though completely executed in point of form, was placed in the hands of the attorney only to be used in case it became necessary. We think that, under these circumstances, the execution of the deed in question was *in fieri* only, and that the re execution did not make a new stamp necessary," *per* Lyndhurst, C B, *Spicer* v *Burgess* (1 C M & R 129) And see also *Matson* v *Booth* (5 M & S. 223), *Murray* v *Earl of Stair* (2 B & C 82) *Hartley* v *Manson* (4 M. & G. 172), *Taylor* v *Perry* (9 L J, C P 298)

A material alteration in a bill or note after issue renders it a new instrument requiring a fresh stamp *Kindly* v *Williams* (10 East, 431)' *Gardner* v *Walsh* (5 E & B 83)

And for this purpose an alteration after issue in the sum, date, time of payment, or the conversion into a negotiable instrument of one which before was not so, would be material alterations Byles, 'Bills of Exchange (17 Ed), 305

"But an alteration will not vacate a bill if made before it is issued If a bill be altered while it is still in the drawer's hands, before it gets into circulation and is accepted, it has never been considered that a new stamp was requisite, otherwise, if it has been accepted, for then it has become a complete bill" *per* Bayley, J, *Matson* v. *Booth* (5 M & S p 226) And see *per* Lord Ellenborough in *Webber* v *Maddocks* (3 Camp 1) See also *Downes* v *Richardson* (5 B & Ald 674), *Sherrington* v *Jermyn* (3 C & P 374), *Byrom* v. *Thompson* (11 A & E 31)

Where a promissory note which was made in 1846 was endorsed by the maker and the date altered to 1866, it was held that a new stamp was not necessary: *Bourdin* v *Greenwood* (13 Eq 281)

An alteration is also permissible to correct a mistake, or supply an omission: *Brutt* v. *Picard* (27 R R 727) But see *Bathe* v *Taylor* (15 East, 412).

No presumption can be made one way or the other as to the circumstances under which an alteration is made It is a matter for proof and the burden of proof lies on the party who sets up the instrument: *Johnson* v. *Duke of Marlborough* (2 Stark, 313). And see Byles' 'Bills of Exchange' (17th Ed), 309, and Chalmers' 'Bills of Exchange' (7th Ed.), 241. See also *Scholfield* v. *Londesborough* (L R. [1896] A C. 514)

But the burden of proving any objection as to irregularity in execution or stamping lies on the party who takes the objection: *Waddington v. Francis* (5 Esp 182) See sec 35, *n*

The Negotiable Instruments Act (XXVI of 1881), sec. 87, provides that any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it were made to carry out the common intention of the original parties. But this is subject to the provisions in the Act relating to inchoate instruments (s. 20), the conversion of indorsements in blank into indorsements in full (s 49), qualified acceptances (s 86) and the crossing of cheques after issue (s 125)

Instrument written contrary to section 13 or 14 deemed unstamped.

15 Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

Note.

Cf. Act I, 1879, sec 14 Cf also 54 & 55 Vic, c 39, s 10 (2).

This is similar to the penalty imposed by sec 12 (2) in the case of adhesive stamps The consequences attendant on an instrument which is not 'duly stamped' are serious (see s 35), notwithstanding the provisions of sec 40, empowering the Collector to remit the penalty in such cases, and the provision for an allowance of the value of the stamp in sec 52 in cases falling under sec 13

Where a second instrument purporting to be a 'release' was written on the back of a 'conveyance' which was itself properly stamped it was held that the second instrument did not invalidate the 'conveyance, and that the release could be validated by payment of the proper stamp-duty and penalty *Ref* (11 Mad 40)

Denoting duty.

16 Where the duty with which an instrument is chargeable, or its exemption from duty depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument by endorsement under the hand of the Collector or in such other manner (if any) as the Governor-General-in-Council may by rule prescribe.

Note.

Cf Act I, 1879, sec 15 Cf also 54 & 55 Vic, c 39, s 11; and 33 & 34 Vic., c 97, s. 14

was altered and re-executed, and then delivered, it was held that no fresh stamp was necessary "The objection taken at the trial was that the stamp, having become *functus officio* by the first execution, could not be again used No doubt if the deed had, in the first instance, been so completely executed, as that the stamp was once occupied, no further use could have been made of it, and a re-execution would have required a fresh stamp But so long as it remained *in fieri* it was not completely executed, and the stamp was not occupied The deed though completely executed in point of form, was placed in the hands of the attorney only to be used in case it became necessary. We think that, under these circumstances, the execution of the deed in question was *in fieri* only, and that the re-execution did not make a new stamp necessary," *per* Lyndhurst, C B, *Spicer* v *Burgess* (1 C. M & R 129) And see also *Matson* v *Booth* (5 M & S 223), *Murray* v *Earl of Stair* (2 B & C 82) *Hartley* v *Manson* (4 M & G 172), *Taylor* v *Perry* (9 L J, C P 298)

A material alteration in a bill or note after issue renders it a new instrument requiring a fresh stamp *Knill* v *Williams* (10 East, 431) *Gardner* v *Walsh* (5 E & B 83)

And for this purpose an alteration after issue in the sum, date, time of payment, or the conversion into a negotiable instrument of one which before was not so, would be material alterations. Byles, 'Bills of Exchange (17 Ed), 305

"But an alteration will not vacate a bill if made before it is issued. If a bill be altered while it is still in the drawer's hands, before it gets into circulation and is accepted, it has never been considered that a new stamp was requisite, otherwise, if it has been accepted, for then it has become a complete bill" *per* Bayley, J, *Matson* v. *Booth* (5 M & S p 226) And see *per* Lord Ellenborough in *Webber* v *Maddocks* (3 Camp 1) See also *Downes* v *Richardson* (5 B & Ald 674); *Skerrington* v *Jermyn* (3 C & P 374), *Byrom* v *Thompson* (11 A. & E 31)

Where a promissory note which was made in 1846 was endorsed by the maker and the date altered to 1866, it was held that a new stamp was not necessary: *Bourdin* v *Greenwood* (13 Eq 281)

An alteration is also permissible to correct a mistake, or supply an omission: *Brutt* v. *Picard* (27 R R 727). But see *Bathe* v. *Taylor* (15 East, 412)

No presumption can be made one way or the other as to the circumstances under which an alteration is made It is a matter for proof and the burden of proof lies on the party who sets up the instrument, *Johnson* v. *Duke of Marlborough* (2 Stark, 313) And see Byles' 'Bills of Exchange' (17th Ed), 309, and Chalmers' 'Bills of Exchange' (7th Ed), 241. See also *Scholfield* v. *Londesborough* (L R. [1896] A. C 514)

But the burden of proving any objection as to irregularity in execution or stamping lies on the party who takes the objection *Waddington v Francis* (5 Esp. 182) See sec 35, *n*

The Negotiable Instruments Act (XXVI of 1881), sec 87, provides that any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it were made to carry out the common intention of the original parties But this is subject to the provisions in the Act relating to inchoate instruments (s 20), the conversion of indorsements in blank into indorsements in full (s 49), qualified acceptances (s 86) and the crossing of cheques after issue (s 125)

Instrument written contrary to section 13 or 14 deemed unstamped.

15 Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

Note.

Cf. Act I, 1879, sec 14 Cf also 54 & 55 Vic, c 39, s 10 (2)

This is similar to the penalty imposed by sec 12 (2) in the case of adhesive stamps The consequences attendant on an instrument which is not 'duly stamped' are serious (see s 35), notwithstanding the provisions of sec 40, empowering the Collector to remit the penalty in such cases, and the provision for an allowance of the value of the stamp in sec 52 in cases falling under sec 13

Where a second instrument purporting to be a 'release' was written on the back of a 'conveyance' which was itself properly stamped it was held that the second instrument did not invalidate the 'conveyance, and that the release could be validated by payment of the proper stamp-duty and penalty *Ref* (11 Mad 40)

Denoting duty.

16. Where the duty with which an instrument is chargeable, or its exemption from duty depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument by endorsement under the hand of the Collector or in such other manner (if any) as the Governor-General-in-Council may by rule prescribe.

Note.

Cf Act I, 1879, sec. 15 Cf also 54 & 55 Vic, c 39, s 11; 33 & 34 Vic, c 97, s. 14

was altered and re-executed, and then delivered, it was held that no fresh stamp was necessary "The objection taken at the trial was that the stamp, having become *functus officio* by the first execution, could not be again used No doubt if the deed had, in the first instance, been so completely executed, as that the stamp was once occupied, no further use could have been made of it, and a re-execution would have required a fresh stamp But so long as it remained *in fieri* it was not completely executed, and the stamp was not occupied The deed though completely executed in point of form, was placed in the hands of the attorney only to be used in case it became necessary. We think that, under these circumstances, the execution of the deed in question was *in fieri* only, and that the re execution did not make a new stamp necessary." *per* Lyndhurst, C B, *Spicer* v *Burgess* (1 C. M & R 129) And see also *Matson* v *Booth* (5 M & S 223), *Murray* v *Earl of Stair* (2 B & C 82) *Hartley* v *Manson* (4 M & G. 172), *Taylor* v *Parry* (9 L J, C P 298)

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And for this purpose an alteration after issue in the sum, date, time of payment, or the conversion into a negotiable instrument of one which before was not so, would be material alterations Byles, 'Bills of Exchange' (17 Ed), 305

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t.a."—See sec 1, *n*

ı relates to the same class of instruments as are ·c. 3 *(a)* It embraces all instruments chargeable a, except those executed out of British India, which in ss 18 and 19, and which are on a different footing f stamping Sections 34 and 47 are special provi-amping Sec 35 provides for the admission of all ses of instruments upon certain conditions.

'ecution"—See sec 2 (12), *n*

mped after execution, but before production in Court ot duly stamped and therefore inadmissible; it was vidence was admissible to show whether or not the tamped before or at the time of execution. *Jethibai* 13 Bom 484) And see *Clarke* v *Roche* (L R. 3 Q B. e also ss 34, 35 *(b)*

not apply to instruments chargeable under any Act hich contained no provision similar to sec 17. See 35, *n*

vere affixed and cancelled immediately after the sig-ıg and the stamping being continuous acts in the , it would be a sufficient compliance with the section. *udson* (24 Mad 259)

in which the Civil Courts find any document, which m, to have been stamped after its execution in contra-they will give a copy of their judgment to the ader, with a view to the prosecution, if necessary, by iorities, of the parties concerned in such after-stamp-' *O No* 5, *25th March*, 1876)

proving any irregularity in the execution or stamping nt lies on the party who takes the objection: *'rancas* (5 Esp 182).

Every other eques, and notes executed out of British India

Every instrument chargeable with duty executed only out of British India and not being a bill-of-exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said

period of three months to the Collector, who shall stamp the same, in such manner as the Governor-General-in-Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Note.

Cf Act I, 1879, sec 17 Cf also 54 & 55 Vic c. 39, s 15 (2); and 51 & 52 Vic c 8, s 18.

"*Instrument chargeable with duty*"—See ss 2 (6), (14), 3

Sub-sec (1)—*This relates to the same class of instruments as* are referred to in sec 3 (1) Sections 18 and 19 provide for all instruments chargeable under this Act which are executed out of British India

Where an instrument was executed in France, whereby property in France was conveyed to a company to be formed in England, it was *held by the House of Lords that the document must also be* stamped as a 'conveyance in England *Commissioners* v *Maple & Co*, *Ld* (L R [1908] A C 22)

An instrument of assignment was executed in Australia on the 26th May, 1862, when the Stamp Act of 1860 was in force in British India, and was received in Madras on the 22nd June, 1862, when the Stamp Act of 1862 was in force Neither of these Acts contained any provision for stamping such an instrument after its receipt in British India, and it was held that as it was not chargeable under either Act no penalty could be levied *Ref* (14 Mad 255)

Sub sec (2)—See s 2 (11), and Rule 11 (2), *(Appx. A)*

Bills, cheques and notes drawn out of British India

19. The first holder in British India of any bill-of-exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates *the same in British India, affix thereto the* prôper stamp and cancel the same :

Provided that,—

(*a*) if at the time any such bill-of-exchange, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive *stamp is affixed thereto* and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed

or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled

(*b*) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

Note.

Cf Act I, 1879, sec 18, and Act XVIII, 1869, sec 8 Cf. also 54 & 55 Vic, c 39, s 35, and 33 & 34 Vic, c 97, s 51.

This section relates to the class of instruments referred to in sec. 3 (*b*) See ss 17, 18

"*First holder*"—The 'holder' of a promissory note, bill-of-exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto Negotiable Instruments Act (XXVI of 1881) sec 6 See also ss 46—60

"*Presents the same*"—See *Id*, ss 61—77

For definitions of 'bills,' 'cheques,' and 'notes' see sec. 2 (2), (3), (7), (22)

"*Proper stamp*"—See sec 11 (*b*)

"*Cancel the same*"—See sec 12 Cancellation may be effected by stamping as well as by writing Where a further question was raised as to whether the cancellation was by the proper person, Blackburn, J, saw no reason why the matter should not be settled by having the bills cancelled in open Court at any moment before verdict. *Vale* v *Michael* (30 L T 463)

Cl (a)—The proviso is intended to protect a person who in good faith takes a foreign bill bearing a proper stamp, though it may afterwards turn out that such stamp was not affixed in accordance with the law.

The holder of a bill-of-exchange drawn abroad and having the proper adhesive stamp affixed to it is not bound to prove that the stamp was so affixed at the time the bill came into his possession "We think it would be most inconvenient to require the plaintiff to show at what time the stamps were affixed The proper stamps were there, and it is fair to assume that the provisions of the statute were duly complied with, unless the defendant had produced evidence to the contrary;" *per* Bovill, C. J, *Bradlaugh* v *De Rin* (18 L. T. 904). See also *McMullen* v. *Sir Alfred Hickman Steamship, Ld* (71 L. J. Ch 766)

period of three months to the Collector, who shall stamp the same, in such manner as the Governor-General-in-Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Note.

Cf. Act I, 1879, sec 17 Cf also 54 & 55 Vic c. 39, s. 15 (2); and 51 & 52 Vic c 8, s 18

"*Instrument chargeable with duty*"—See ss. 2 (6), (14), 3

Sub-sec (1)—This relates to the same class of instruments as are referred to in sec 3 (c) Sections 18 and 19 provide for all instruments chargeable under this Act which are executed out of British India

Where an instrument was executed in France, whereby property in France was conveyed to a company to be formed in England, it was held by the House of Lords that the document must also be stamped as a 'conveyance' in England *Commissioners* v *Maple & Co., Ld* (L R [1908] A C 22)

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Bills, cheques and notes drawn out of British India.

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Provided that,—

(*a*) if at the time any such bill-of-exchange, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed

or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled

(*b*) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

Note.

Cf Act I, 1879, sec 18, and Act XVIII, 1869, sec 8 Cf. also 54 & 55 Vic, c 39, s 35, and 33 & 34 Vic, c 97, s 51

This section relates to the class of instruments referred to in sec. 3 (*b*) See ss 17, 18

"*First holder* —The 'holder of a promissory note, bill-of-exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto Negotiable Instruments Act (XXVI of 1881) sec 6 See also ss 46—60

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The holder of a bill-of-exchange drawn abroad and having the proper adhesive stamp affixed to it is not bound to prove that the stamp was so affixed at the time the bill came into his possession. "We think it would be most inconvenient to require the plaintiff to show at what time the stamps were affixed. The proper stamps were there, and it is fair to assume that the provisions of the statute were duly complied with, unless the defendant had produced evidence to the contrary" *per* Bovill, C. J, *Bradlaugh* v. *De Rin* (18 L. T. 904). See also *McMullen* v *Sir Alfred Hickman Steamship, Ld.* (71 L. J. Ch. 766)

(31 L. 1 37-)

Cl. (b)—For the penalties see ss 62, 63

D.—Of Valuations for duty.

20. (1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of British India, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument

Conversion of amount expressed in foreign currencies

(2) The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1)

Note.

Cf Act I, 1879, ss 19, 20, and Act XVIII, 1869, sec. 10 Cf also 54 & 55 Vic, c 39, s 6, and 33 & 34 Vic, c 97, ss 11—13

"*Instrument is chargeable*" See ss 2 (6), (14), 3

Sub-sec (2)—The present Act imposes no fixed rates of exchange as the Act of 1879 did, and therein follows the English Acts For *Notification* under sub-sec (2), see *Appx B*

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security, according to the average price or the value thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued

Note.

Cf Act I, 1879, sec. 21 Cf also 33 & 34 Vic, c. 97, s 12, and 54 & 55 Vic, c 39, ss 6, 122.

"*Instrument is chargeable*"—See ss 2 (6), (14), 3

"*Any stock*"—This has been defined in the English Stamp Act, 1891, sec. 122, to mean and include "any share in any stocks or funds transferable at the Bank of England or at the Bank of Ireland, and

India promissory-notes, and any share in the stocks or funds of any Foreign or Colonial State or Government, or in the capital, stock or funded debt of any County Council, corporation, company, or society in the United Kingdom, or of any foreign or colonial corporation, company or society"

"*Marketable security*"—See sec 2 (16 A)

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price

Note.

Cf Act I, 1879, sec 22 Cf also 54 & 55 Vic, c 39, s 6 (2), and 33 & 34 Vic., c 97, s 13.

Where a price or value is stated in the instrument, the stamp-duty must be calculated on the price or value so fixed If it were otherwise, it would be impossible for the parties to a document to fix the amount or value for the purpose of determining what stamp-duty should be paid *Bhairab Chundra v Alek Jan* (13 Cal 268)

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest

Note.

Cf Act I, 1879, sec 23, and Act XVIII, 1869, sec 9

This principle has been applied to the case of an account stated and signed by a debtor and stipulating for payment of interest: *Girdhar Naran v Umar Aju* (4 Bom 326) But see Art 1, *n*

A promissory-note is properly stamped if the stamp is sufficient to cover the principal sum secured by the note without regard to any interest: *Gowes v. Young* (12 W R, O A 1) See also *Prueseur v. Ing* (4 B & Ald. 204); *Doe v Smith* (8 Bing 146); *Porter v Smart* (7 M. & W. 590); *Prudential Mutual Assurance v. Curzon* (8 Ex. 97); *Narasayya Chetti v. Guruvappa Chetti* (1 Mad 378)

But from the terms of the explanation to sec 24 it is clear that this provision would not apply to the case of a transfer made subject to interest already due, and that sec. 23 would be inapplicable to such a case at least.

Where, a bond was couched in these terms "We keep a loan of the balance Rs 100 and execute this bond to pay twice this amount, including Rs 100 for interest, total Rs 200, in eight years," it was held that the amount secured by the bond was Rs 200, and should be stamped accordingly, sec 23 having no application: *Sambhu Chandra Bepari v Krishna Charan Bepari* (26 Cal 179)

Interest coupons, if not issued with and attached to securities, have been held to be separately chargeable *Australasian Mortgage and Agency Co v Commissioners* (26 Sc L R 47), *Rothschild & Sons v Commissioners* (L R [1894] 2 Q B 142) And see also Art 27, *post*

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements

[23A. (1) Where an instrument (not being a promissory-note or bill-of-exchange)—

(*a*) is given, upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(*b*) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security; it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No 5 (*c*) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty]

Note.

Cf. 54 & 55 Vic, c 39, s 23, and 51 & 52 Vic, c 8, s 14

This is a new section introduced by Act XV of 1904, and is a reproduction of sec 23 of the English Stamp Act, 1891.

"*Where an instrument*"—See sec 2 (2), (14), (22)

"*Not being a promissory-note or bill-of exchange*"—The former it is presumed would be chargeable under Art 6 (2), and the latter exempt under Art 40, Ex. (2)

"*Marketable Security*"—See sec. 2 (16*d*)

How transfer in consideration of debt, or subject to future payment, etc, to be charged

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a

charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) *A* owes *B* Rs 1,000 *A* sells a property to *B*, the consideration being Rs 500 and the release of the previous debt of Rs. 1,000 Stamp-duty is payable on Rs. 1,500.

(2) *A* sells a property to *B* for Rs 500 which is subject to a mortgage to *C* for Rs 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs 1,700.

(3) *A* mortgages a house of the value of Rs 10,000 to *B* for Rs. 5,000. *B* afterwards buys the house from *A*. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

Note.

Cf. Act I, 1879, sec 24, and Act XVIII, 1869, sec. 34 (*b*) Cf also 54 & 55 Vic, c 39, s 57, and 33 & 34 Vic., c. 97, s. 73

The first proviso was introduced by Act VI of 1894, and is in accordance with the ruling in *Ref* (5 Mad 18), *infra* The explanation and illustrations have been added to show that the consideration for such a sale is to be reckoned not only upon the money paid but also upon the money due for discharge of the incumbrance.

"*Any person*"—This includes any company or association or body of individuals, whether incorporated or not: General Clauses Act (X of 1897), sec 3 (39)

"*Any property is transferred*"—See sec 2 (10), *n.*
"*Any money or stock* "—See sec 2 (10), *n*, and s 21, *n*

Transfer subject to a Charge—The following opinions were expressed under sec 24 of the previous Act The stamp-duty on a conveyance is assessed on the consideration for the conveyance A conveyance may be made in consideration of a present payment of money or delivery of stock or of a debt or of an undertaking in the future to pay money or deliver stock Where there is such an undertaking, the property is transferred *subject* to the payment Where the property is under mortgage, the property is subject to the charge, but the transfer is not necessarily subject to the charge; it becomes so if it be accompanied by an undertaking to discharge the mortgage The undertaking is in whole or in part the consideration Where there is no such undertaking, the mortgage-debt cannot be regarded as forming any part of the consideration for the transfer The stamp duty payable on a certificate of sale is, however, not governed by this section, but by the express provisions of Art 16, sch 1 [Art 18] *Ref* (5 Mad 18)

"Where property is sold subject expressly to the payment or transfer by the purchaser of any money or stock, whether such money or stock be charged upon the property or not, such payment or transfer becomes the consideration for the sale, and as soon as it is paid or transferred, and not till then, the purchaser is entitled to his conveyance In such a case it is perfectly fair that the *ad valorem* stamp-duty should be calculated upon the amount of such money or stock But where a property is merely sold, subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances no part of the consideration for the purchase The vendor simply sells, and the purchaser buys, an incumbered property; and it is in no way essential to the validity of the sale that the mortgage or charge should be paid off" *per* Garth, C J, *Ref* (10 Cal 92)

"Section 24 applies to cases in which the purchaser undertakes a liability, and his undertaking in such cases no doubt forms part of the consideration It is one thing to make the sale subject to, in the sense of accompanied by, a condition to discharge a mortgage, it is another to sell property subject to a mortgage, that is to say, to sell the interest remaining in the mortgagor without imposing on the purchaser any personal obligation". *per* Turner C. J., *Ref* (7 Mad. 421)

A different opinion was expressed by the Bombay High Court in the following cases:—*Sha Nagindas Jeychand* v *Halalkore Nathasa Gheesla* (5 Bom 470); *In re Vishnu Keshav Sathe* (10 Bom. 58); and *Sinappya* v. *Shivapa* (15 Bom. 675) But the first two of these were cases of sale certificates, which have now been expressly excluded from the section. See Art. 18, *n.*

The explanation to the present section with its proviso appear to be a compromise between the two divergent opinions, inasmuch as they provide that, while any unpaid mortgage-money or money charged shall be deemed to be part of the consideration for the sale, *i e* for the purposes of stamp-duty, a mortgagee shall be entitled to deduct any duty already paid in respect of the mortgage from the duty payable on the transfer, the proviso being intended as a concession to a mortgagee who is himself the purchaser and is only purchasing the remaining interest of the mortgagor But the concession is expressly limited to a mortgagee

The property, however, which is transferred must be identical with the property mortgaged, and not merely a portion of it *In re Nirabai* (29 Bom 203)

Section 57 of the English Stamp Act of 1891, the terms of which are identical, has been construed as follows "Where property is incumbered and is sold subject to the incumbrance, or even subject to a bond or condition that certain money shall be paid in future, then upon payment off of the incumbrance, or upon payment of the money stipulated to be paid in future, the purchaser obtains an estate discharged from the incumbrance, or bond, or condition, and the money so paid in discharge of the incumbrance, or bond, or condition is paid indirectly as part of the purchase-money of the estate, and therefore it is right that the sums of money, upon the payment of which the purchaser is able to obtain an unincumbered estate, should be taken into consideration as forming part of the purchase money, and be added to the amount paid by the purchaser as the price of the incumbered estate, or as the price of the estate sold burthened with the condition of the payment of money in future" *per* Bruce, J, in *Swayne v. Commissioners* (L R. [1899] 1 Q B. p 341). See also *per* Martin, B, in *Mortimore v. Commissioners* (2 H & C 838)

For the history of the legislation on this subject, see *Commissioners v Liquidators of City of Glasgow Bank* (18 Sc. L. R. 242)

"*The interest due on the same*"—The provisions of sec 23 are apparently not intended to cover the case contemplated here (see s 23, *n*).

"*Subject to the payment of any money.*"—These words contemplate a liability to pay money arising in some way other than as incident to and inseparably connected with the property conveyed. Where a lease for years subject to the payment of an annual rent is conveyed or assigned, the very property conveyed is in its nature a qualified property, and the liability to pay rent arises out of the nature of the estate conveyed The liability to pay rent is therefore not in the nature of a charge or incumbrance on the . *Swayne v. Commissioners* (L R [1899] 1 Q B 335)

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

Valuation in case of annuity, &c

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ,

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due , and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due

Note.

Cf Act I, 1879, sec 25 , and Act XVIII, 1869, sec 12 Cf also 54 & 55 Vic , c 39, s 56 , and 33 & 34 Vic , c 97, s 72

"*Instrument is executed*"—See sec 2 (14), (12)

Cl (a)—Where, on the transfer of an undertaking from one company to another, part of the consideration was the payment of a dividend out of the profits of the new company, the dividend so payable was held to be 'money payable periodically,' but in as much as there were no data from which it could be ascertained, it was impossible to make it chargeable with duty · *Underground Electric Railway Co.* v. *Commissioners* (L. R. [1906] A. C. 21)

Cl (b)—The words "calculated from the date on which the first payment becomes due" have been substituted for 'next after the date of such instrument or conveyance '

Where land was sold for a sum of £ 50, plus a yearly payment of 1s, it was held (s 56) that the consideration for the 'conveyance' was £ 51, i e £ 50 plus 1s × 20, and was chargeable accordingly · *Martin* v *Commissioners* (91 L T 453)

Cl (c) —This deals with contracts under which for some executed consideration money becomes immediately due, though payable by fixed periodical payments An Entrance Certificate granted under the rules of the Uncovenanted Service Family Pension Fund is not within its scope *Ref* (19 Cal 409) The word " maximum " has been substituted for ' total

Stamp where value of subject-matter is indeterminate

26 Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

[(*a*) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,]

(*b*) when the lease has been granted by any other person, at twenty thousand rupees a year,

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease.

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41,

25 Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

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(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due , and

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Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

[(*a*) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,]

(*b*) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease.

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41,

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

Valuation in case of annuity, &c.

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due , and

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conflicting decisions. Under Act XXXVI of 1860, the provisions of which were somewhat different, it has been held that it could not be so validated · *Syud Keramut Ali* v *Moonshee Abdul Wahab* (17 W. R. 131)

But more recently it has been held under Regulation XVIII of 1827, that additional stamp-duty and penalty may be paid, in order to obtain judgment for a larger sum, and that there is nothing to prevent the Courts from allowing this to be done *Mulji Bechar* v. *Jetha Jeshankar* (10 Bom 239)

And this seems to be the better view, for it would be unreasonable if a person who neglected to stamp a document altogether could obtain the benefits of sec 35, while a person who only failed to estimate correctly a value which was unascertainable could not.

"I should be very sorry to see justice defeated by holding that a man is to lose his claim by making a mistake The greatest injustice might be caused if we were to hold that the plaintiff should lose his whole claim simply because he made such a mistake" *per* Peacock, C J, in *Gomes* v *Young* (12 W R, O A 1)

And see also *per* Lord Lindley in *Powell* v *London and Provincial Bank* (L R [1893] 2 Ch 555), under sec 27, *post*

Claimable means claimable in a Court of justice Where a bond, which was given as security for sums advanced on a running account, was stamped sufficiently to cover a gross sum of Rs 10,000, the intention of the parties evidently being that it should continue as security for fresh advances up to that limit after the former advances had been paid off, the fact being that such advances never at any time exceeded Rs 10,000, although a much larger sum had actually been discharged during the pendency of the security, it was held that this would not prevent the mortgagee from recovering in a suit the balance of the debt *Harendra Lal Roy* v *Tarini Charan Chakravarti* (31 Cal 807). See also *Morgan* v *Pike* 14 C B 473)

Section 26 extends only to cases of instruments chargeable with *ad valorem* duty It could have no application to the case of a security-bond executed by a cashier as security for the due fulfilment of his duties as such, and for the repayment of any sum he might be found liable for to an extent not exceeding Rs. 6,000, which would be chargeable under Art 57 (*b*) *McDowell & Co* v. *Ragava Chetty* (27 Mad. 71).

A difficulty arises in applying sec 26 to a class of cases which were apparently not in the contemplation of the Legislature In the case of a lease chargeable according to the amount payable under the first year it has been held that where the amount of the rent reserved for the first year or indeed for any year of the term is at the time of the execution of the instrument incapable of ascertainment, it would

the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

Note.

Cf Act I, 1879, sec 26, and Act XVIII, 1869, sec 11.

This section provides for the levy of duty *ad valorem* when the amount on which it would have to be reckoned is unascertainable A person is free to select his own rate of duty, but may not recover upon the instrument more than the amount which the stamp covers. An exception is, however, made by the first proviso, which is new, in the case of a lease of mines, when the rent is to be a share of the produce or a royalty on the profits In such cases it is generally impossible to predict what the rent may be, but any one who chooses to assess the share of the produce at Rs 20,000 a year may recover any amount in excess of that estimate without regard to the limit covered by the stamp.

Clause *(a)* of the proviso is an innovation introduced by Act XV of 1904 The section as it stood was found to be unsuitable to the case of mining leases granted by the Government It is for this reason the Collector has been empowered to estimate the amount of the royalty which he considers likely to be payable, and it will be equally effectual if the lease is stamped in accordance with his estimate A Collector's estimate under cl *(a)* is subject to revision by the Chief Controlling Revenue authority under sec 56

The second proviso has been added to cover the case, where by accident, an instrument is insufficiently stamped originally and the proper duty is subsequently paid under ss 41 and 42

"*Any instrument chargeable with duty*"—See sec. 2 (6), (14)

"*Cannot be ascertained*"—This section will not apply to cases in which the value of the subject-matter *can* be ascertained Where an instrument of release bore an insufficient stamp of two annas, and the High Court on appeal left the deed as part of the evidence in the case, but qualified its effect and the extent of its operation by treating it as releasing so much as would be covered by the insufficient stamp of two annas, it was held by the Privy Council that the proper course would have been to require the document to be properly stamped and the penalty paid into Court, and that the course taken was entirely without precedent, principle or authority *Mantappa* v *Baswantrao* (15 W. R, P. C. 32).

"*Commencement of this Act*"—See sec. 1, *n*

"*Execution or first execution*"—See sec. 2 (12).

"*Nothing shall be claimable*"—The question whether an instrument bearing an optional stamp of insufficient value can be validated by the payment of the proper duty and a penalty has given rise to

conflicting decisions. Under Act XXXVI of 1860, the provisions of which were somewhat different, it has been held that it could not be so validated *Syud Keramut Ali* v *Moonshee Abdul Wahab* (17 W. R. 131).

But more recently it has been held under Regulation XVIII of 1827, that additional stamp-duty and penalty may be paid, in order to obtain judgment for a larger sum, and that there is nothing to prevent the Courts from allowing this to be done *Mulji Bechar* v. *Jetha Jeshankar* (10 Bom 239)

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Section 26 extends only to cases of instruments chargeable with *ad valorem* duty It could have no application to the case of a security-bond executed by a cashier as security for the due fulfilment of his duties as such, and for the repayment of any sum he might be found liable for to an extent not exceeding Rs 6,000, which would be chargeable under Art 57 (*b*) *McDowell & Co* v. *Ragava Chetty* (27 Mad 71).

A difficulty arises in applying sec 26 to a class of cases which were apparently not in the contemplation of the Legislature In the case of a lease chargeable according to the amount payable under the first year it has been held that where the amount of the rent [illegible] for the first year or indeed for any year of the term is at the the execution of the instrument incapable of ascertainment,

be unjust to deprive the parties of their rights under the instrument, because they had failed to estimate the highest amount that might be recoverable in any year of the term, and that sufficient effect would be given to sec 26 by holding that, in the first year of the term, no more could be recovered than the amount on which the stamp-duty was computed, but that, in any subsequent year, the amount recoverable is to be determined by the terms of the instrument' *Collector of Tanjore* v *Ramasamier* (3 Mad 342)

The provisions of this section are so stringent that even an admission of a plaintiff's claim will avail him nothing if the stamp does not cover it *Kistnasamy Pillay* v *Municipal Commissioners for Madras* (4 Mad H C R 120)

Where a document provided for the payment of Rs 25 as earnest money to secure the supply of 21 maunds of unrefined sugar, on which the grower was to receive a profit of 9 annas per maund over the prices fixed at the meeting of growers, plus the payment of a sum which could not have been ascertained at the time the deed was executed, owing to the price not having then been fixed, it was held that as to the sum which could not have been ascertained sec. 26 applied *In the matter of Gyraj Singh* (9 All 585)

But where a Company agreed to sell its undertaking to a new Company in consideration of certain money and shares, and a further part of the consideration for the sale was "such a sum as shall be equal to a dividend of 3 per cent for such year, on the amount for the time being paid up on such of the original ordinary share capital in the new Company as shall for the time being have been issued by the new Company," it was held that this sum was of so uncertain a character, there being no data from which it could be ascertained, that it was impossible to bring it in for the purposes of *ad valorem* duty, although it no doubt constituted a substantial consideration: *Underground Electric Railways Co* v *Commissioners* (L R [1904] 2 K. B 198)

Facts affecting duty to be set forth in instrument

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Note.

Cf. Act I, 1879, sec. 27, and Act XVIII, 1869, sec 34 *(a)* Cf also 54 & 55 Vic., c 39, s 5: and 33 & 34 Vic, c. 10

"*Chargeability of any instrument.*"—See sec 2 (6), (14)

Where, by an agreement to lease, two properties were demised, the rent of the one being stated, while the rent of the other was not, but was ascertainable by reference to the rent paid by the tenants then in possession, and the stamp-duty had been properly calculated on both, it was held that the document was rightly stamped and properly admitted in evidence *Parry* v *Deere* (5 A & E 551)

And so in the case of a conveyance, wherein the consideration for the transfer was not set out in terms as required by the Act of 1858, but appeared from the recital of the agreement for the sale, it was held that, although the Commissioners might have insisted upon the insertion of the real and true consideration in the deed, the provision might be considered rather as directory than imperative, the real object being to obtain the revenue *Furness Railway Co* v *Commissioners* (33 L. J Ex 173)

Under a similar provision (8 & 9 Vic, c 16, s 41) it has also been held that the omission to set forth the consideration in express terms would not invalidate an instrument *Landowners West of England &c Co* v *Ashford* (L R 16 Ch. D 411)

And see *per* Lord Lindley, L J, "I do not dwell upon the point of the stamp, nor upon that part of the Act which says that the consideration is to be duly stated No case that I know can be cited to show that that part of the Act is otherwise than directory, or that a misstated consideration would invalidate a deed " *Powell* v *London and Provincial Bank* (L R [1893] 2 Ch 555)

An exception is made in favour of a class of settlements made for religious purposes by Buddhists in Burma, wherein it is contrary to religious duty to express the value of the property settled see Art 58, Ex. *(b)*

A person who disregards the directions of the section, with fraudulent intention, is punishable under sec 64 But the instrument itself is not laid under any disability

As to the effect of an adjudication by the Collector in such cases, see sec. 31.

If the instrument be one of sale, gift or usufructory mortgage affecting immoveable property in Calcutta the fact must be stated therein.

"Section 27 of the Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of –

(a) property situated in the Calcutta Municipality, and

(b) property situated outside the Calcutta Municipality, respectively" (By Act V of 1911, s. 82)

28 (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration,

Direction as to duty in case of certain conveyances

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified

(3) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration ; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the

excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a *sub-purchaser takes an actual conveyance* of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees with a duty of five rupees.

Note

Cf. Act I, 1879, sec 28 Cf also 54 & 55 Vic, c 39, s 58; and 33 & 34 Vic,, c 97, s 74

This section provides for the apportionment of duty in certain cases of conveyance It is framed precisely on the lines of sec. 58 of the English Stamp Act of 1891, with the exception that one of the provisions (sub-sec 3) is appropriated with modifications to sec. 4 (*ante*)

"*Any property is conveyed*"—See sec 2 (10), *n*

Sub sec. (1).—This apparently means that the whole consideration may be apportioned in any manner the parties please, so long as a distinct consideration is apparent in each case, so as to allow of the duty being correctly levied

Sub-sec (2).—This is the same as the previous provision, but applies where the purchasers are numerous.

Sub-sec. (3)—This provides for the case of a substituted purchaser and obviates the payment of duty twice over It does not apparently contemplate a sub-sale at a profit

Sub-sec. (4)—This provides for the case of sub sales to numerous sub purchasers, not necessarily immediate, by separate conveyances to each from the original seller Here the duty is leviable in each case separately, and if any residue be left to be conveyed then only on the excess or balance of the consideration, but with a minimum limit of one rupee.

Sub-sec. (5)—This deals with the case of a sub-purchaser having actually obtained a conveyance from the original purchaser

Here if any subsequent conveyance of the same property be made to him, to perfect his title, by the original seller, the duty on such subsequent conveyance will not in any case exceed five rupees

E.—Duty by whom payable

Duties by whom payable

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(*a*) in the case of any instrument described in any of the following Articles of Schedule I, namely:—

No. 2 (Administration Bond),

[No 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No 13 (Bill-of-Exchange),

No 15 (Bond),

No 16 (Bottomry Bond),

No 26 (Customs Bond),

No 27 (Debenture),

No 32 (Further Charge),

No 34 (Indemnity-Bond),

No 40 (Mortgage-Deed),

No. 49 (Promissory-Note),

No 55 (Release),

No 56 (Respondentia Bond),

No. 57 (Security Bond or Mortgage-Deed),

No. 58 (Settlement),

No. 62 (*a*) (Transfer of shares in an incorporated company or other body corporate),

No 62 (*b*) (Transfer of Debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (*c*) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance)—

by the person drawing, making or executing such instrument;

[(*b*) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance;

(*bb*) in the case of a policy of fire-insurance—by the person issuing the policy.]

(*c*) in the case of a conveyance (including a re-conveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee

(*d*) in the case of a counterpart of a lease—by the lessor

(*e*) in the case of an instrument of exchange—by the parties in equal shares

(*f*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates; and,

(*g*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs

Note.

Cf Act I, 1879, sec 29 and Act XVIII, 1869, sec 6

Parties are free to arrange among themselves who is to bear the cost of the stamp. It is only in the absence of an agreement that sec. 29 applies. Any one from whom the duty or penalty has been *unjustly levied may recover it under sec. 44*

Cl (a) —Art 6 has been amended by Act XV of 1904

Cl (b).—This has been amended by Act V of 1906

Cl (bb) —This clause was introduced by Act V of 1906

Cl (c) —The position of the words in parenthesis has been altered

Cl (g) —Under the Act of 1879 it was held that "by the expression 'the parties thereto' must be understood not merely the party or parties applying for partition, but the whole co-sharers, who must necessarily be parties in the partition proceedings, and equally bear the proper stamp-duty." *per* Stuart, C. J. "The property comprised in the instrument of partition has to be valued, and the parties thereto contribute towards the expense of the stamp in proportion to their shares in the property. If a stamp of one hundred rupees was required, and the property was worth ten thousand rupees, and five

shareholders being co-owners, *divided* or *agreed* to divide, in severalty, the proportionate value of their shares would be two thousand rupees each, and each one would pay the duty on two thousand rupees unless there was an agreement to the contrary, or where a Revenue authority had directed otherwise in a partition made under his orders The last part of sec 29 of the Act gives the Revenue-officer full authority in the matter, and the 'final order' is the instrument of partition " *per* Spankie, J, *Ref* (2 All 664)

And so where by an instrument of partition, a division of family property was effected, it was held that each member must pay according to the share which he had taken under the partition: *Ref* (15 Mad 164)

Under the present Act the duty is leviable (Art 45) only in respect of the portion of the estate which is separated off, but though this is so it must be remembered that the duty as a whole is a burden upon the whole estate, so that the co-sharers who remain undivided have got to bear that share, although the share they bear is a much smaller one see Art 45, *n*

Obligation to give receipt in certain cases

30 Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory-note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same

[Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same].

Note.

Cf Act I, 1879, sec, 58; and Act XVIII, 1869, sec. 27 *(a)*
The second para. was introduced by Act V of 1906
"*Any person.*"—See sec. 2 (1) *n*

"*Duly stamped receipt*"—See sec. 2 (11), (23), and Art 53. The obligation does not extend to the giving of a second receipt after payment has been acknowledged on a postal money order *Emperor* v *Balmakund* (34 All 192)

A penalty for refusal to give a receipt is provided by sec 65 But there is no corresponding obligation on the payer to *take* one. A party making payment is in no case obliged to take a receipt; he may prove the payment by other evidence, as he may even when a receipt has been taken : *Veal* v *Warner* (1 Saun. 325, *n*). Or he can avail himself of the provisions of sec. 35 (*b*)

Where a debtor paid his creditor a sum of money and accepted a receipt without a stamp, promising to affix one himself, it was held that he had not committed the offence of abetment of making an unstamped receipt, for he did not aid the offence by any act, because he did nothing, nor by any illegal omission, for he did all he could do, he asked for a stamped receipt, and, on being informed that it was impossible to give him one, as the creditor had no stamp, he took the only thing he could get, that is the receipt without the stamp, *Queen-Empress* v *Mitthu Lal* (8 All 18)

As to the liability of a principal for the act of an agent failing to comply with the provisions of this section, see sec. 62, *n*

CHAPTER III.

ADJUDICATION AS TO STAMPS.

Adjudication as to proper stamp

31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:—

Provided that—

(*a*) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable and

(*b*) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Note.

Cf Act I, 1879, sec 30 and Act XVIII, 1869, sec 39 Cf also 54 & 55 Vic, c 39, s 12, and 33 & 34 Vic c 97, ss 18, 20

Sub sec (1) This must be read along with the proviso to sec. 32 (3), which excludes instruments (*a*) which have been executed more than a month before, (*b*) which have been executed out of British India and have been received in British India more than three months before, and (*c*) which are chargeable with a one-anna or half anna duty, or bills and notes, after they have been drawn or executed These limitations have doubtless been imposed for the purpose of restricting the benefits of the section to *bona fide* applications Sec 41 however provides a further concession in cases of ' accident, mistake or urgent necessity

"*Any instrument whether executed or not* —See sec. 2 (12), (14)

"*The person bringing it* — This would presumably include, not merely the parties to a deed, but also any one acting in their behalf

"*Chargeable* —See sec 2 (6)

"*The Collector shall determine* See sec 2 (9) If a Collector acting under this section feels a doubt as to the amount of duty which he should levy, he may refer the question for decision by the Chief Controlling Revenue authority (see sec 56)

Sub-sec. (2) —The immunity offered is presumably for the purpose of facilitating an enquiry into the true state of facts The section is silent as to the liability of a person for making a false statement

"*Any penalty under this Act*"—The provision referred to is *sec 64*

Certificate by Collector

32 (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorize the Collector to endorse—

(*a*) any instrument executed or first executed in *British India and brought to him after the expiration* of one month from the date of its execution or first execution, as the case may be ,

(*b*) any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India ; or

(*c*) any instrument chargeable with the duty of one anna [or half an anna], or any bill-of-exchange or promissory-note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

Note.

Cf Act I, 1879, sec 31 , and Act XVIII, 1869, sec 39 Cf also 54 & 55 Vic , c 39, s 12 , and 33 & 34 Vic , c 97, ss 18, 20

Sub-sec. (1) —The Collector's certificate is subject to the restrictions imposed in the provisos to the section.

"*Instrument chargeable with duty.*"—See ss 2 (6), (14), 3

Sub sec. (2)—His opinion is final (G O. No. 1314, 25th *Nov* 1882)

Sub-sec (3)—The effect of this provision is to make a determination by a Collector, which has been duly endorsed on an instrument, final in respect of that instrument It cannot therefore be referred by the Revenue authorities to the High Court under sec 57 for opinion, and the High Court would have no power to adjudicate on it, if it were referred: *Ref.* (25 Mad. 751)

"*Deemed to be duly stamped*"—Any instrument upon which an endorsement has been made may be acted upon as if it had been originally duly stamped *Ref* (11 Mad 37) The words of the English Act are 'shall be admissible in evidence, and available for all purposes notwithstanding any objection relating to duty.' And see s 35 (*e*).

Even if the Collector endorsed, under this section, an instrument, such as a promissory-note, which he had no authority to endorse, the irregularity would not prevent the admission of the document as evidence *Girdhari Das* v. *Jagan Nath* (3 All. 115) This has been approved in *Devachand* v *Hirachand Kamaraj* (13 Bom p 456). See also *Prudential Mutual Assurance* v *Curzon* (8 Ex 97)

The same principle has been applied to a registrar's endorsement on a deed after due registration *Mohammed Ewaz* v *Birj Lall* (L R 4 I A p 175)

In making allowances under sec 49 a Collector's certificate is to be treated as an impressed stamp *Ref* (11 Mad 37)

The limitations contained in the proviso must be read along with the previous section (see s 31, *n*) The words 'or half an anna' were introduced by Act V of 1906

CHAPTER IV

INSTRUMENTS NOT DULY STAMPED

Examination and impounding of instruments

33 (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898,

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf

(3) For the purposes of this section, in cases of doubt,—

(a) the Governor-General in Council may determine what offices shall be deemed to be public offices; and

(b) the Local Government may determine who shall be deemed to be persons in charge of public offices.

Note.

Cf. Act I, 1879, sec. 33; and Act XVIII, 1869, ss 20, 23 Cf also 54 & 55 Vic. c. 39, s 14; and 33 & 34 Vic. c. 97, s. 16

This chapter contains the preventive provisions, the main object of which is to secure the proper scrutiny of instruments liable to stamp-duty when produced by their possessors, and the effective working of the criminal penalty clauses as a deterrent to wilful evasions. Under the former law many evils existed; the obligation to see that all documents produced in courts and public offices were properly stamped, was generally ignored unless and until the parties producing them desired to put the documents in evidence. It was not an uncommon thing for persons to produce documents improperly stamped, and, on being told that they would have to pay a specified amount by way of penalty, to withdraw the documents and forego putting them in evidence In such cases they were allowed to escape punishment for the offence which they had committed in not stamping or sufficiently stamping their instruments, and which is not the

Sub sec (2)—His opinion is final (G O. No. 1314, 25th *Nov.* 1882.

Sub sec (3)—The effect of this provision is to make a determination by a Collector, which has been duly endorsed on an instrument, final in respect of that instrument It cannot therefore be referred by the Revenue authorities to the High Court under sec. 57 for opinion, and the High Court would have no power to adjudicate on it, if it were referred *Ref* (25 Mad 751)

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"The Stamp Act is a Revenue Act, an Act which imposes pecuniary burdens, and the rule of construction in respect of such Acts is that, in case of a doubt, the construction most beneficial to the subject is to be adopted The subject is not to be taxed, and therefore not to be compelled in this case to pay the higher duty unless the language is clear and unambiguous *per* Field, J. "When a particular construction has for some years been put upon a fiscal enactment *in favour of the public*, and that construction has been generally acted upon and acquiesced in by the Government, I think a strong presumption arises in favour of that construction, and I consider moreover that no other construction, unfavourable to the public, should afterwards be put upon the enactment, except for some very cogent reason indeed *per* Garth, C J, *Anonymous Case* (10 Cal p 280) See also *Kishori Lal Roy* v *Sharut Chunder Mozumdar* (8 Cal 593) *Rainier* v *Gould* (13 Mad 255), *Ref* (9 Mad p 148)

"The rule of law that no pecuniary burden can be imposed upon the subjects of this country, by whatever name it may be called, whether tax, due, rate or toll, except upon clear and distinct legal authority established in proof by those who seek to impose the burden has been so often the subject of legal decision that it may be deemed a legal axiom, and requires no authority to be cited in support of it" *per* Wilde C J, *Gosling* v *Veley* (12 Q B p 407) See also *S. C* (4 H. L. pp 727, 781) *Denn* v *Diamond* (4 B & C p 245)

"The art of interpreting statutes of this character—statutes which impose taxation—cannot be considered an exact science; it is rather a practical art, and the questions which arise cannot be dealt with as though they were simple questions to be settled upon principles of common law" *per* Wills, J, *Swayne* v *Commissioners*, L. R [1899] 1 Q B p 344)

"It must be observed that, *in dubio*, you are always to lean against the construction which imposes a burden on the subject. The meaning of the Legislature to tax him must be clear": *per* Lord Brougham, *Stockton Railway Co* v *Barrett* (11 Cl & F. p 607)

"If there is a doubt as to the meaning of the Stamp Act, it ought to be construed in favour of the subject, because a tax cannot be imposed without clear and express words for that purpose. It is sufficient to say that we ought to read the language of the Act most beneficially for the subject." *per* Pollock, C. B, *Gurr* v *Scudds* (11 Ex 190) See also *Marquis of Chandos* v. *Commissioners* (6 Ex. p. 479)

"When the legislature assume to impose a tax on the subject, they must do so in clear and distinct terms; if the matter remains

in doubt, the subject is entitled to judgment": *per* Lord Esher, M. R, *Commissioners* v *Angus* (L R. 23 Q B D p 589).

The party who seeks to bring an instrument within the Stamp Act must show clearly that it falls within it The Court can make no intendments in favour of the liability *Phillips* v. *Morrison* (13 L J Ex. 212)

"It is a well-settled rule of law that every charge on the subject must be imposed by clear, unambiguous words " *per* Parke, B, *Wroughton* v *Turtle* (11 M & W p 567)

"We must look to the precise words of these Revenue Acts, because, in some degree, they operate as penalties" *per* Park, J "In the construction of a Statute imposing a duty we must take care that no higher duty is imposed than the legislature intended" *per* Bosanquet, J, *Doe* v *Smith* (8 Bing p 152)

"The Acts which impose a tax or charge upon the subject cannot be extended by implication If the express words of the enactment do not warrant or necessitate a demand of duty or charge, it is not competent to a court of law in construing such enactment to extend it or to give the words a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of the enactment." *per* Norman, C J, *Port Canning Land Co, Ld* (16 W R. 208) See also *Dullabh Shivlal* v *Hope* (8 Bom H C R, A C J 213)

"I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of no authority *for saying that a taxing Act is to be construed differently from* any other Act The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed The Court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like. *Courts have to give effect to what the Legislature has* said": *per* Lord Russell, C. J, *Attorney-General* v *Carlton Bank* (L. R. [1899] 2 Q B. p. 164).

This opinion has been criticised in these terms. "Lord Russell of Killowen does not apparently agree with the statement of Lord Tenterden that Acts of Parliament imposing duties are so to be construed as not to make any instrument liable to them unless manifestly within the intention of the Legislature, but it

is not necessary to say which is right because I think the natural is the manifest meaning, unless there is something to show that it is not *per* Bray J., *General Council of the Bar* v. *Commissioners* (L. R. [1907] 1 K. B. p. 475).

"The law upon the subject of stamps is altogether a matter *positivi juris*. It involves nothing of principle or of reason, but depends altogether on the language of the legislature" *per* Taunton, J., *Morley* v. *Hall* (2 Dowl. p. 497).

"In a taxing Act it is impossible to assume any intention, any governing purpose in the Act to do more than take such tax as the statute imposes. Cases therefore under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation" *per* Lord Halsbury, L. C., *Tennant* v. *Smith* (L. R. [1892] A. C. p. 154).

"It is a well established rule that the subject is not to be taxed without clear words for that purpose, and also that every Act of Parliament must be read according to the natural construction of its words" *per* Lord Wensleydale, *In re Micklethwait* (11 Ex. p. 456). And see also *per* Pollock, B., *Clifford* v. *Commissioners* (L. R. [1896] 2 Q. B. p. 193).

"As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute;" *per* Lord Cairns, *Partington* v. *Attorney-General* (L. R. 4 H. L. p. 122).

The Crown fails if the case is not brought within the words of the statute, interpreted according to their natural meaning; and if there is a case which is not covered by the statute so interpreted, that can only be cured by legislation, and not by an attempt to construe the statute benevolently in favour of the Crown: *Attorney-General* v. *Selborne* (L. R. [1902] 1 K. B. p. 396).

But though this is so, an exemption from duty must be strictly construed in favour of the State. *In re Nirabai* (29 Bom. 203).

Interpretation of Statutes.—"For those who have judicially to interpret a statute the question is, not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the

in doubt, the subject is entitled to judgment": *per* Lord Esher, M. R., *Commissioners* v. *Angus* (L. R. 23 Q B D. p 589).

The party who seeks to bring an instrument within the Stamp Act must show clearly that it falls within it The Court can make no intendments in favour of the liability *Phillips* v. *Morrison* (13 L. J. Ex 212)

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the instrument, require a duly stamped receipt to be substituted therefor

Note.

This apparently applies only to the audit of public accounts by by public officers not to private audits

"*Any receipt chargeable with duty*"—See sec. 2 ([illegible] 23), and Art. 53

35 No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped ,

Instruments not duly stamped inadmissible in evidence etc

Provided that—

(a) any such instrument not being an instrument chargeable with a duty of one anna [or half an anna] only, or a bill-of-exchange or promissory-note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion,

(b) where any person from whom a stamped receipt, could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ;

(*c*) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;

(*d*) nothing herein contained shall prevent the admission of any instrument in evidence in any proceedi a

Legislature, if violence were done to the language in which their legislation has taken shape, but such a course would on the whole be quite as likely to defeat as to further the object which was in view. Whilst, however, it is necessary to resist any temptation to deviate from sound rules of construction in the hope of more completely satisfying the intention of the Legislature, it is quite legitimate, where more than one construction of a statute is possible, to select that one which will best carry out what appears from the general scope of the legislation and the surrounding circumstances to have been its intention" *per* Lord Halsbury, L. C., in *Brophy v. Attorney-General of Manitoba* (L. R. [1895] A. C. p. 216).

'The proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a Code a particular branch of the law, is to be treated in this fashion, its utility will be entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate' *per* Lord Herschell, *Bank of England v. Vagliano Brothers* (L. R. [1891] A. C. p. 144).

This has been cited with approval by Lord Macnaghten in *Narendra Nath Sircar v. Kamalbasini Dasi* (L. R. 23 I. A. p. 26), and by Lord Watson in *Robinson v. Canadian Pacific Railway Co.* (L. R. [1892] A. C. 481).

Special provision as to unstamped receipts.

34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account such officer may in his discretion, instead of impounding the

the instrument, require a duly stamped receipt to be substituted therefor

Note.

This apparently applies only to the audit of public accounts by by public officers not to private audits

"*Any receipt chargeable with duty*" —See sec 2 (cl. 23), and Art 53

35 No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped ;

Instruments not duly stamped inadmissible in evidence etc.

Provided that—

(a) any such instrument not being an instrument chargeable with a duty of one anna [or half an anna] only, or a bill-of-exchange or promissory-note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion,

(b) where any person from whom a stamped receipt, could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped ;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a

Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898,

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

Note.

Cf Act I, 1879, sec. 34, and Act XVIII, 1869 ss 18, 28 Cf. also 54 & 55 Vic, c 39, s 14, and 33 & 34 Vic, c 97, ss 16, 17.

The words 'or half an anna' in clause (i) have been introduced by Act V of 1906

This section deals with the admissibility of instruments in evidence for the purposes of the Stamp law All instruments, except those specified in cl (i), may be rectified, if not duly stamped, by payment of the proper duty and penalty

"*Instrument*"—See sec 2 (14)

"*Chargeable with duty*"—See sec 2 (6) An instrument does not become 'chargeable' unless the conditions which render it liable to duty are fulfilled Until then the obligation to stamp does not arise, and sec 35 would be no bar to its admission in evidence' *Mahomed Rowthan* v *Mahomed Husain* (22 Mad 337)

The onus of impeaching an instrument for want of a stamp, or of showing that a higher stamp was necessary, lies on the party who objects to its being received in evidence *Wilson* v. *Smith* (12 M & W p 404) See also *King* v *Inhabitants of Enderby* (2 B & Ad. 205), *The Belfort* (L R 9 P D p 217), *Marine Investment Co* v *Haviside* (L R 5 H L 624) See 'Presumption,' *post.*

The objection to the stamp, whether for insufficiency or absence, should in general be taken before the instrument is read. Byles, 'Bills of Exchange' (17th Ed), 137

"The General Council of the Bar have expressed the opinion that it is undesirable that counsel should either object to the admissibility of any document upon the ground that it is insufficiently stamped, unless such defect goes to the validity of the document; or take part in any discussion in support of any objection, unless invited to do so by the Court:" Lord Halsbury's 'Laws of England,' vol. xxiv, p. 707."

"*For any purpose*"—These words are express. Formerly an unstamped document could be admitted, not to give effect to it, but for a *collateral* purpose *Rustomji Edulji* v *Cursetji Sorabji* (4 Bom. 347)

The words appear to be free from ambiguity and to prevent an instrument which is chargeable with a one anna stamp, and which cannot be admitted on payment of a penalty, from being admitted in evidence *for any purpose*, including the purpose of saving limitation *Mulji Lala v. Lingu Makaji* (21 Bom 201)

But although an acknowledgment for want of a proper stamp, could not be acted upon as an acknowledgment of a particular sum being due, it might without violating the intention of the Stamp Act, be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold *Lalchand Har[illegible] v. K[illegible]* ([illegible] Bom [illegible])

In each case the instrument of acknowledgment must be carefully examined in connection with the surrounding circumstances to ascertain whether it has been signed to support evidence of a debt *Binparam v. Rajmohan Roy* (8 Cal 282) *Bishamber Nath v. Nand Kishore* (15 All 56) Upon the result the decision as to the admissibility or non admissibility of the unstamped acknowledgment will depend *Mulji Lala v. Lingu Makaji* (21 Bom p 205)

"An unstamped bill, or one improperly stamped, cannot be read to the jury as evidence of the contract, or any part of it, in respect of which the plaintiff sues Such an instrument may be looked at by the Court for the purpose of seeing whether it requires a stamp, or is properly stamped It may be looked at by the jury also for a collateral object, as was done in the case of *Gregory v. Fraser* (3 Camp 454), where the defence was, that the maker of a note was drunk at the time the money was advanced, and was imposed upon by the plaintiffs, and the handwriting of the note was vouched as proof of that fact" *per* Lord Tenterden, C. J., *Jardine v. Payne* (1 B & Ad p 670)

"The object of both the statute and common law would be defeated, if a contract, void in itself, could not be impeached, because the written evidence of it is unstamped, and therefore inadmissible If that were so, a party entering into such agreement might avoid the consequences of its illegality, by taking care that no stamp should be affixed to it I think, therefore, that in all cases, where the question is whether the agreement is void at common law or by statute, and the party introduces it, not to set it up and establish it, but to destroy it altogether, there is no objection to its admissibility": *per* Lord Abinger, C B, *Coppock v. Bower* (4 M & W p 366)

An unstamped document, otherwise inadmissible, has been admitted to prove the fact of bribery (*Dover v Maestaer*, 5 Esp 92), or to show it was part of a scheme of fraud (*Reg v. Gomperts*, 9 Q. B p. 839). And see *Ponsford v. Walton* (L. R. 3 C. P. 167); *Ex parte Squire*

(L. R. 4 Ch A. 47), where an assignment of a debtor's property, though *unstamped, was admitted as evidence of an act of bankruptcy*

It has been held that a document containing all the requisites to make a valid contract, and purporting to be a receipt, though by reason of its being insufficiently stamped, inadmissible as such, might be received as evidence of the contract *Evans* v *Prothero* (1 D. M. & G. 572) This has been explained to mean only that a document insufficiently stamped is not admissible in evidence, unless the fact to be proved is something collateral to the document itself It was accordingly held that a promissory-note insufficently stamped cannot be admitted in evidence to prove the receipt of the money for which the note was given, this being of the very essence of the promissory note itself and not collateral to it *Ashling* v *Boon* (L R [1891] 1 Ch 568)

"That expression 'collateral purpose seems to have been very much misunderstood If you produce a receipt, not to show the discharge of a debtor by his creditor from a particular demand, but for the purpose of establishing some other fact different from that of payment of the debt, you may be said to produce it for a collateral purpose" *per* Lord Cottenham, L C, *Matheson* v *Ross* (2 H L Cas p. 300)

If a receipt for money and an agreement are written on the same piece of paper, this is receivable in evidence as a receipt, if it has a receipt stamp, without an agreement stamp *Grey* v *Smith* (1 Camp. 387)

"Where an instrument contains several distinct contracts, and as uch requires several stamps, it may be used as evidence of one contract for which it was stamped, although it would not be admissible s evidence in respect of the contract for which it was not stamped" *er* Peacock, C J, *Luchmeeput Singh Doogur* v *Mirza Khyrat A* 12 W R, F B p 12) See also *Evans* v *Pratt* (11 L. J, C P. 87)

A document may be looked at, though unstamped, for the purose of testing an argument which if successful would preclude it rom ever being carried into effect *Mason* v *Motor Traction Co* L. R [1905] 1 Ch 419)

And a document which is inadmissible in evidence may also be anded to a witness to refresh his memory See *post*

"*Acted upon*"—An instrument is 'acted upon' when a decree is assed on it whether *proved or admitted, and if it is not duly* stamped an appellate court cannot, owing to the language of the Stamp Act ive effect to it in either case *Chenbasapa* v. *Lakshman Ramchandra* 18 Bom 369)) And see *Fatehsinh* ... v *Kasan* (18 Bom p 16)

"*Any such person or any public officer*"—See sec 33. *n*

"The Act has expressly made it the duty of the judge to eject any document which requires to be stamped and is not

(L. R. 4 Ch. A. 47), where an assignment of a debtor's property, though unstamped, was admitted as evidence of an act of bankruptcy.

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"*Acted upon*."—An instrument is 'acted upon' when a decree is passed on it whether proved or admitted, and if it is not duly stamped an appellate court cannot, owing to the language of the Stamp Act, give effect to it in either case. *Chenbasapa* v. *Lakshman Ramchandra* (18 Bom. 369). And see *Lalchand Hirachand* v. *Kisan* (18 Bom. 516).

"*Any such person or any public officer*."—See sec. 33.

"The Act has expressly made it the duty of the judge to reject any document which requires to be stamped and is not

Council, concurring with the High Court, found nothing amiss: *Kurali Prosad Misser* v *Anantaram Hajra* (8 B. L R p 502)

But if an instrument bore a telegraph stamp instead of one prescribed by this Act or the rules framed under it, it could not be regarded as being stamped at all *Ref* (23 All 213)

A remedy is, however, provided by sec 37, and Rule 16 (*Appx A*)

A receipt stamped after execution, *i e*, in contravention of sec 17, was held to be not 'duly stamped' and therefore inadmissible in evidence. It was held also that evidence is admissible to ascertain at what time an instrument has been stamped *Jethalal* v *Ramchandra* (13 Bom 484)

'Duly stamped' would further mean stamped with the value and description of stamp required by the law in force when the instrument was first executed *Ref* (15 Mad 394) *Abid Husain* v *Ashgar Husain* (11 All L J 506) *Clarke* v *Roche* (L R 3 Q B D 170) See also ss 2 (11) and 33 (2)

Cl (a)—This clause furnishes an exception to the rule against the admissibility of instruments not duly stamped, and provides for the admission in evidence of some on payment of duty and penalty Nothing is said, however, as to their being allowed to be 'acted on, registered, or authenticated' when similarly rectified But, although this is not expressly stated, it would appear from a survey of the other provisions of this chapter that it must have been intended to be so When a public officer impounds an instrument (s 33) he must send it to the Collector [s 38 (2)], who after levying the duty and penalty [s 40 (*b*)], will certify the fact by an endorsement on the instrument [s 42 (1)], which then becomes fit to be 'registered, acted on, and authenticated' [s 42 (2)], as if it had been 'duly stamped' originally

"*Subject to all just exceptions*"—A Court might, under sec. 20 Act XVIII of 1869, have refused to allow a defect as to stamp duty to be remedied, unless it were proved affirmatively to its satisfaction that there was no intention to evade the payment of stamp duty; *Gambhirmal* v *Chejmal* (10 Bom H C R 406), *Prosunno Nath Lahiree* v *Trilocone Soondaree Dabee* (24 W R. 83)

But, as a general rule, a Civil Court is bound to allow the defects in an insufficiently stamped deed to be made good in the manner which the law has provided, when their is no reason to suspect any design on the part of the holder to defraud the revenue. *Pentz* v *Malse* (3 Bom H C R, A. C. p 101). Or unless it clearly appears that there was an intention to evade stamp duty *Royal Bank of India* v. *Hormusji* (3 Bom H. C R, O C. 153).

"*[illegible]*"—Any decision as to the sufficiency of the duty or penalty leviable is open to revision by an appellate

sue for the original consideration But when the original cause of action is the bill or note itself, and does not exist independently of it, as for instance when, in consideration of *A* depositing money with *B*, *B* contracts by a promissory-note to repay it with interest at six months' date, here there is no cause of action for money lent otherwise than in the note itself, because the deposit is made upon the terms contained in the note and no other. In such a case the note is the only contract between the parties, and if for want of a proper stamp or some other reason the note is not admissible in evidence, the creditor must lose his money: *Sheikh Akbar* v. *Sheikh Khan* (7 Cal p 259) See also *Radhakant Shaha* v. *Abhoychurn Mitter* (8 Cal 721), *Promatha Nath Sandal* v. *Dwarka Nath Dey* (23 Cal 851), *Virbhadrapa* v. *Bhimaji* (28 Bom. p 434), *Krishnaji* v. *Rajmal* (2 Bom L R 25); *Banarsi Prasad* v. *Fazal Ahmad* (28 All 298)

Where a promissory note was inadmissible for want of a stamp, yet looking at the correspondence and the facts of the case it appeared that the promise was made by a verbal adoption of certain terms which had already been stated, and on that view the document was only evidence of a verbal agreement which had been entered into previously, the plaintiff succeeded on the ground that there was evidence outside the document of an agreement on which the defendant was liable, though if the case had stood on the document alone he would have failed [illegible] v. *Dance* 53 L. T. R. 125) *Brown* v. *Watts* (1 Taunt 353

But the pleadings should be properly framed for the purpose *Farr* v. *Price* 1 East p 58 [illegible] v. *Jones* (Id 117), *Gopal Chund Marawaree* v. [illegible] 3 Cal 314) See also *per* Lord Kenyon, C J, in [illegible] v. *Hodgson* (7 T R p 243) in *Wilson* v. *Kennedy* 1 Esp p 246), and in [illegible] (4 Esp p 7)

And so where a suit was brought to recover the price of goods supplied and the claim would have been barred by limitation but for a certain document, tendered in evidence as an acknowledgment of the debt, it was held that the document was admissible as such, on the stamp it bore (one anna), although it might also be regarded as a promissory-note (which as such was insufficiently stamped), for the question between the parties was not whether the defendant had promised to pay the plaintiff his debt, but whether that debt was due and recoverable, the plaint being also substantially framed as for a debt due: *Kanhaiya Lal* v. *Stowell* (3 All 581) And see *Balbhadar Prasad* v. *Maharaja of Betia* (9 All 351), *Hira Lal* v. *Datadin* (4 All 135); *Krishnasami* v. *Ramasami* (7 Mad 112)

But, on the other hand, where a suit was brought to recover on a hundi and a Court of first instance held that, while the hundi was

insufficiently stamped and therefore inadmissible, the plaintiff might recover the consideration on independent evidence, and gave him a decree, it was held in second appeal that the suit was not brought to recover the consideration, but was brought on the hundi, and that plaintiff must fail, as the hundi was insufficiently stamped *Vallappa v. Mahommed Khan* (5 Mad 166). See also *Aukur Chunder Roy v. Madhub Chunder Ghose* (21 W R 1) *Pota Reddi v. Velliyuthswan* (10 Mad 94).

Nor would the admission of its contents by the defendant avail the plaintiff if the document were itself inadmissible for want of a stamp *Damodar Jagannath v. Atmaram Babaji* (12 Bom 443), *Chenbasapa v. Lakshman Ramchandra* (18 Bom 369). And see *per* Sargent, C J., in *Ra[illegible] v. Gananath Fazal* (14 Bom p 111), *Thaji Beebi v. Tirumalappa Pillai* (30 Mad 386).

But it might be otherwise if the admission of liability were such as to dispense with the production of the document altogether. *Aukur Chunder Roy v. Madhub Chunder Ghose* (21 W. R. p. 2); *Damodar Jagannath v. Atmaram Babaji* (12 Bom 443), *Chenbasapa v. Lakshman* (18 Bom 369).

The statement of a party to a suit is admissible against him to prove the contents of an instrument even though it was not stamped: *Muttu Kasuppa v Rama Pillai* (3 Mad H C R 159).

An acknowledgment of a debt, made in a *khata* or account-book to save limitation, would not, if unstamped, vitiate a claim based on the *khata* if otherwise proved or admitted, and it might still be used for the purpose of showing an acknowledgment of an existing liability in respect of goods sold, though not of a particular sum being due *Fatechand Harchand v. Kisan* (18 Bom 614).

Refreshing memory by document —But an insufficiently stamped promissory-note, though inadmissible in evidence, may be handed to a witness to refresh his memory and obtain from him an admission of the loan, and this notwithstanding the provision of the Stamp Act, 1891, that an instrument not duly stamped "shall not be given in evidence or be available for any purpose whatever": *Birchall v. Bullough* (L R [1896] 1 Q. B. 325).

The same has been held in the case of an unstamped receipt. *Jacob v. Lindsay* (1 East 460), *Maugham v. Hubbard* (8 B. & C. 14).

Where a receipt is void for want of a stamp it may be shown to a witness to refresh his memory. "The paper produced was not produced as evidence of itself; but it was a material memorandum, which the witness might refer to, and give parol evidence of the fact of payment, which he might do though a receipt had been so given. *per* Lord Ellenborough, *Rambert v. Cohen* (4 Esp 213).

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Where no receipt has been taken payment may be proved by other evidence, and this may be done even when one has been taken, for it is not like the case of a contract, which if reduced into writing, can be proved only by production of the writing *Veale* v. *Warner* (1 Saund p 325, *n*)

It has also been held that the copy of a document may be used by a witness to refresh his memory as to the contents of the original, upon the non production of the original by the opposite party after notice to produce *Braythwayte* v. *Hitchcock* (10 M & W. 494)

A witness *may*, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if when he read it he knew it to be correct. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document provided the Court be satisfied that there is sufficient reason for the non production of the original Indian Evidence Act, sec 159 See also *Id*, ss 160, 161

Cl (b) —This clause furnishes an exception to the rule against the admission in evidence of instruments 'chargeable with a duty of one anna', contained in the previous clause

"*An unstamped receipt*"—The provision is intended to cover all cases in which a receipt is sought to be put in evidence against the person who ought to have stamped it

It is not intended that the stamp duty of one anna should be levied in addition to the penalty of one rupee, or that there should be an endorsement made in the manner provided by sec 42 : *Ref* (24 All 374)

"*Any person*"—See sec 2 (1), *n*. See also ss 2 (23), 34, 65, and Art 53.

Cl. (c) —This clause furnishes an exception to the general rule as to stamping every document, when several are employed in arriving at a contract. It presupposes the absence of a formal instrument embodying all the terms

"*A contract effected by correspondence.*"—This provides for the case of contracts which are to be gathered from correspondence when there is no formal instrument to be stamped ; it will be sufficient if *any one* of the letters forming the correspondence bears the proper stamp

It will be observed that the absence of a formal instrument makes it difficult to apply the rule contained in sec 17 As no time is specified it is presumed that the stamp may be affixed at any time before production This would have to be done under Rule 9 *(2)*, for sec 11 does not provide for it

The provision is in accordance with the principle laid down in *Stead* v *Liddard* (8 J B Moore p 7), *Peto* v *Dicken* (1 C M & R 422), *Grant* v *Maddox* (15 M & W 737) and *Bird* v *Krieg* (17 Cal 548) It disposes of the ruling in *Kameri* v *Gould* (13 Mad 255

Cl (d) —The exemption of criminal proceedings from the operation of the Stamp Act is not extended to proceedings under Ch xii, Cr P C (ss 145—148) which relates to disputes as to immoveable property, and to Ch xxxvi, Cr P C ss 488—490), relating to the maintenance of wives and children There is no obligation on a Criminal Court to examine or impound a document except as provided by sec 33 *(a)*

Cl (e) —The first portion of the clause is in accordance with sec 3 (1), and the last with ss 32 (3) and 42 (2) The latter provision has been added to meet a possible case of hardship where a Collector has certified an amount as being the proper duty which the Court considers less than the proper duty, the party tendering not being to blame

'*Or any other provision*' —See ss 40, 42, 37, and Rule 16 *(Appx A)*

Interpretation of Instruments —In determining what provision of the Stamp laws is applicable to a particular instrument, regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title was a misnomer, *Pendse* v *Malse* (3 Bom H C R, A C p 100).

"In applying the stamp law the stamp must be paid upon what is stated in the instrument and cannot depend upon collateral evidence. If a man signs a promissory-note payable on demand, it appears to me that the note ought to be stamped as a note payable on demand, although there may be a collateral agreement between the parties that the holder of the note will not present it for a given time, or if paid on demand, that the maker of the note shall be entitled to a certain amount of discount to be deducted." *per* Peacock, C. J., *Chandrakant Mookerjee* v *Kartickcharan Chaile* (5 B. L. R p 103). See also *Ramen Chetty* v. *Mahomed Ghouse* (16 Cal. 432), *Sakharam* v. *Ramchandra* (27 Bom 279); *Royal Bank of Scotland* v. *Tottenham* (L. R. [1894] 2 Q B. 715).

In determining the stamp which ought to be affixed to a document, or its admissibility in evidence, the state of things existing at the time

of its execution has alone to be regarded, *Chinnaya Nattan* v. *Muttusami Pillai* (1 Mad H C R p 228), *Antaji Nilkanth* v. *Janardan Vinayak* (10 Bom H C R 358) See also *Moran* v. *Mitta Bibee* (2 Cal p. 87)

"In order to determine whether any, and if any what stamp-duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained, that the description of it given in the instrument itself by the parties is immaterial, even although they may have believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declare For instance, if a writing were headed by a recital that the parties had agreed to execute the promissory note thereinafter written, and yet if in truth the contract set forth was not a promissory note but an agreement of another character, the stamp duty would be not that of a promissory note, but of the agreement The question, therefore, stamp or no stamp, and if a stamp to what amount, is to be determined upon the real and true character of the writing" *per* Martin, B, *Limmer Asphalte Paving Co* v. *Commissioners* (L R 7 Ex 211) See also *King* v. *Inhabitants of Ridgwell* (6 B & C 665), *Bull* v. *O'Sullivan* (L R 6 Q B 209), *Gatty* v. *Fry* (L R 2 Ex D 265)

"Deeds and contracts of the people of India ought to be liberally construed The form of expression, the literal sense, is not to be so much regarded as the real meaning of the parties which the transaction discloses" *per* Knight Bruce, L J, *Hanoomanpersaud Pandey* v. *Mussumat Babooee Munraj* (6 Moore I A p 411)

In determining whether a document comes within the description of an instrument upon which a stamp is imposed by a Stamp Act, it is necessary to look at the entire document, to see whether it fairly falls within the description *Brojender Coomar* v. *Bromomoye Chowdhrani* (4 Cal p. 887)

Where different parts of a deed are inconsistent with each other, *e.g.*, if a part purporting to operate as a demise is inconsistent with the object and general contents of the deed, and would have the effect of defeating, and not of giving effect to, the intention of the parties, according to the approved rules of construction effect should be given to that part which is calculated to carry into effect the real intention, and that part which would defeat it should be rejected. *Walker* v. *Giles* (6 C. B. 662)

"The expression in the instrument of that which the law implies has no effect as to the necessity of a further stamp, '*Expressio eorum quae tacite insunt nihil operatur*:'" *per* Parke, B, *Woughton* v. *Turtle* (11 M. & W. p 570)

"For the purposes of the Stamp Acts, it cannot have been intended that a document should be treated as in part a promissory note and in part an agreement. It must be either one or the other The question

is, what is the dominant, the substantial effect of the instrument? The Courts have said that, in order to determine the question, two things must be inquired into—what is the intention of the parties, and what is the instrument in the common acceptation of men of business, or persons among whom it is commonly used *per* Pollock, B, *Mortgage Insurance Corporation* v. *Commissioners* (L R 20 Q B. D. p 651) See also *per* Lindley [illegible] *British India Steam Navigation Co.* v. *Commissioners* [illegible] Q B D p 172, and *per* Lord Halsbury L C [illegible] (L R 44 Ch D p 605)

"Where a document is not given and taken as a promissory-note, and is not a promissory note in fact the Stamp Act cannot apply" *per* Brett M R [illegible] (53 L J [illegible] p 126) This was subsequently explained by Lord Esher M R, thus:—"What I am reported to have said in [illegible] as to the parties not intending the document to be a promissory note, meant nothing more than that the intention of the parties is an element to be taken into account in considering what is the nature of the document" *Mortgage Insurance Corporation* v. *Commissioners* (L R 21 Q B D p 355)

"In all these cases it appears to me that the substance of the transaction is alone to be considered upon the question, whether the instrument is liable to stamp duty" *per* Kelly, C B, *Christie* v. *Commissioners* (L R 2 Ex p 50) See also *per* Lopes, L. J, in *Great Western Railway Co.* v. *Commissioners* (L R [1894] 1 Q B p 513) And see s. 33, *ante*.

Procedure—In dealing with unstamped or insufficiently stamped instruments executed before the present Stamp Act came into force, the procedure to be adopted and the penalties to be levied should be regulated not by the old Acts which have been repealed, but by the Indian Stamp Act *Ref* (5 Mad 394). And see *Cal H C. G. L.* No. 14, 30*th Sep*, 1880

For the procedure to be followed see ss 38, 40, 42, 44

A Court rejecting a document as not properly stamped, should record a formal order to that effect, and also a direction to pay in the stamp fee and fine, if receivable · *Dewan Koonjo Lall* v *Court of Wards* (25 W. R 116).

"The levy of a penalty implies a punishment for neglect in failing to affix the proper stamp at the time of *execution*." *Narayanan Chetti* v *Karuppathan* (3 Mad p. 253)

Where the duty and penalty have not been tendered to and refused by a Court of first instance, an appellate Court has no authority to direct reception of the document on a subsequent tender of that amount *Champabaty* v. *Bibi Jibun* (4 Cal 213)

Discretion — The discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal Specific Relief Act (1 of 1877), sec. 22

When the Legislature has not made any particular rule of conduct imperative, but leaves the procedure to be followed under particular circumstances within the discretion of a Court or Judge, it is intended that a sound and reasonable discretion should be exercised, and not that the matter should depend on the caprice or fancy of the Court or individual in whom the discretion may be vested When a Court of original jurisdiction exercises the discretion vested in it in an irregular and unreasonable manner, it is the duty of an appellate Court to rectify its erroneous procedure If it refuse the relief which it has *power to grant, arbitrarily, and without assigning any* good reason, it is the duty of the Court, to which an appeal lies from its decision, to correct the error which has been committed *Pendse* v *Malse* (3 Bom H C R, A C p 100)

"Discretion, when applied to a Court of Justice, means *sound* discretion *guided by law* It must be governed by rule, not by humour, it must not be arbitrary, vague, and fanciful, but legal and regular". *per* Lord Mansfield, *Rex* v *Wilkes* (4 Burr 2539)

"If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion. This may perhaps increase our responsibilities and add to our labours, but no one would shirk the one or grudge the other " *per* Jenkins, C J *Emperor* v *Bankatram Lachiram* (28 Bom p. 566)

Presumption when instrument not produced.— The Court shall presume that every document called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law Indian Evidence Act (I of 1872), sec. 89

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court. *A* sues *B* on an agreement and gives *B* notice to produce it. At the trial *A* calls for the document and *B* refuses to produce it *A* gives secondary evidence of its contents *B* seeks to produce the document itself to contradict the secondary evidence given by *A*, or in order to show that the agreement is not stamped. He cannot do so. *Id*, sec. 164

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case : *Id*, sec. 114

Until the contrary is proved, the following presumptions shall be made—that a *lost promissory-note, bill-of exchange or cheque*

(7 Mad 440), *Arunachellum Chetty* v *Olagappah Chetty* (4 Mad H C R 312); *Raja of Bobbili* v *Inuganti* (23 Mad 49) But see also *Hiran Chunder Bhooree* v *Russick Chunder Neogy* (20 W. R 63), and *Abed Hasun* v *Ashgar Husain* (11 All. L. J. 506).

Unexecuted draft — A draft agreement was duly prepared and and submitted to the Solicitors of a Company, and by them approved and returned, and at a meeting of the Directors a resolution passed empowering the Solicitors to sign the agreement on behalf of the Company, although in fact it was never executed. In a subsequent action the plaintiff offered the draft, not as an agreement *per se* (it being neither dated, stamped nor signed) but for a collateral purpose, and it was held that the draft was inadmissible for want of a stamp, inasmuch as it could only be relied on as proof of the special agreement, the plaintiff being precluded from suing upon an implied contract *Chadwick* v. *Clarke* (1 C B 700)

Where an agreement which had been drawn up and sent to a person for signature was returned unexecuted along with a letter approving of the agreement, it was held that the document could be admitted in evidence on payment of a penalty *Cavalho* v *Puget* (4 F & F 537)

But where a draft agreement had endorsed on it the following memorandum signed by the parties—"We approve of this draft," it was held that the words did not import an agreement and that the document was admissible without a stamp *Lambourn* v. *Pedgriph* (4 C & P 312) And see also *Hill* v *Johnson* (3 C. & P. 456)

Stamped paper signed in blank —Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp Negotiable Instruments Act (XXVI of 1881), sec 20

When a person chooses to entrust to his own man of business a blank paper duly stamped as a bond, and signed and sealed by himself, in order that the instrument may be duly drawn up and money raised upon it for his benefit, if the instrument is afterwards duly drawn up and money obtained upon it from persons who have no reason to doubt the *bona fides* of the transaction, it must, in the absence of any evidence to the contrary be taken that the bond was drawn in accordance with the obligor's wishes and instructions. As Lord Mansfield says. "Nothing

is so clear as that an endorsement on a blank note is a letter of credit for an indefinite sum. It does not lie in the defendant's mouth to say that the endorsements were not regular: *Walidummessa v. Surendra* (5 Cal. 9).

36 Where an instrument has been admitted in evidence, such admission shall not except as provided in section 61 be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of instrument where not to be questioned.

Note.

Cf Act I, 1879, sec. 34 (1).

This provision was formerly incorporated with the previous section.

"*Instrument*" — See sec. 2 (14).

"*Except as provided in sec. 61*" — It is only for purposes of stamp duty that an appellate Court can question the admission of an instrument in evidence [see s. 61 (4), (b)].

"*At any stage*" — This will include an appeal.

Where a Court of first instance, ruling that a certain document was not a promissory-note but an agreement, admitted the same on payment of penalty, it was held that the document having once been admitted, no contention of inadmissibility could be raised in special appeal: *Khoob Lall* v. *Jungle Singh* (3 Cal 787). See also *Lakhshmi Narayana Aiyar* v. *Suppara Gaundan* (2 Mad H. C R. 321), *Currie* v. *Chatty* (11 W R 520), *Enayetoollah* v. *Shaikh Meajan* (16 W R 6), *Devachand* v *Hirachand Kamaraj* (13 Bom 449), *Punchanund Dass Chowdhry* v. *Taramoni Chowdhrain* (12 Cal. 64), *Shiddapa* v *Irava* (18 Bom. 737); *Abid Husain* v. *Ashgar Husain* (11 All L J 506), *Sitaram* v *Ramprosad* (19 Cal L J. 87).

If an appellate Court considers the document to be insufficiently stamped it may proceed under sec. 61; *Gurpadapa bin Irapa* v *Naro Vithal Kulkarni* (13 Bom 493); *Ref.* (8 Mad 564); *Punchanund Dass* v. *Taramoni Chowdhrain* (12 Cal. 64), *Chinnaya Rau* v. *Ramaya* (4 Mad p 140).

Again, where an instrument, which had been rejected by the Court of first instance as not duly stamped was improperly admitted by the District Judge on appeal, the High Court held that they were precluded from allowing it to be called in question in second appeal, although the Judge was in error in admitting it: *Ramasami* v. *Ramasami* (5 Mad. 220).

(7 Mad 440), *Arunachellum Chetty* v *Olagappah Chetty* (4 Mad H C R. 312); *Raja of Bobbili* v *Inuganti* (23 Mad 49). But see also *Hiran Chunder Bhooree* v *Russick Chunder Neogy* (20 W R 63), and *Abid Husain* v *Ashgar Husain* (11 All L J. 506)

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When a person chooses to entrust to his own man of business a blank paper duly stamped as a bond, and signed and sealed by himself, in order that the instrument may be duly drawn up and money raised upon *it for his benefit, if the instrument is* afterwards duly drawn up and money obtained upon it from persons who have no reason to doubt the *bona fides* of the transaction, it must [illegible]
be taken that the [illegible]
wishes and instruc[illegible]

But where a Court of first instance had dismissed a suit brought on two *hundis* which were inadmissible in evidence for want of a proper stamp, and the lower appellate Court holding that there was a sufficient admission of liability to dispense with proof of the documents nevertheless gave a decree on them, it was held that the language of the Act prevented their being thus 'acted upon,' and reversed the decree, but at the same time remanded the case for further evidence in support of the claim, which was alleged to be available, independent of the *hundis* *Chenbasapa* v. *Lakshman* (18 Bom 369)

On the other hand where a document was admitted tentatively, pending the determination of the question at issue, and was found afterwards to be unstamped and therefore inadmissible, it was held that it must be excluded, notwithstanding the provisions of sec. 36 *Chunilal* v. *Mulabai* (12 Bom L R 466)

No appeal lies against the order of a Court requiring payment of a penalty on reception of an instrument in evidence, because the order is not one which affects the merits of the case or the jurisdiction of the Court It is not appealable as a decree, because it is not a decree in any sense, nor it is appealable as an order imposing a fine, for a penalty under the Stamp Act is not a fine as contemplated by the Code of Civil Procedure [see s 104 (*h*)] "There is no doubt that if the plaintiffs had refused to pay the penalty, and the bond had consequently been rejected, the plaintiffs, if the Judge was wrong, might have appealed to this Court, upon the ground that he had committed an error of law in refusing to [illegible]ve the document in evidence; and it certainly seems rather hard that, [illegible]use the plaintiffs submitted to the judgment of the Court and pa[illegible] penalty, they should be without redress in a Court of Appeal L[illegible]t is the law as we read it, and we consider that the only remedy [illegible] the plaintiffs have, is to apply to the Revenue Board We ha[illegible] had the opinion of that Board read to us It seems to be of opinion that the bond was [illegible]

[illegible] *drain* v. *Bhoobunjoy Shaha* (5 Cal. 311). See also *Afzalunissa* v *Tej Ban* (1 All 725)

This section applies equally to documents admitted in evidence by arbitrators: *Bombay Co Ld.* v. *National Jute Mills Co* (39 Cal 669)

But the duty and penalty should be tendered. Where they have not been tendered to and refused by a Court of first instance, an appellate Court has no authority to direct reception of the document on a subsequent tender of the amount: *Champabaty* v. *Bibi Jibun* (4 Cal. 213); *Ramkrishna Gopal* v. *Vithu Shivaji* (10 Bom H. C. R. 441); *Lakshmandas* v. *Rambhau* (20 Bom. 791).

Note.

Cf 54 & 55 Vic c 38 s 10, and c 39 s 37

This provision meets the difficulty raised in a *Reference* (8 Mad 532), where it was held by Turner, C J that an instrument which contravened one of the stamp-rules framed under the Act could not be admitted under the general provisions of the Act as an unstamped document in the absence of some special directions to that effect: see Stamp rules 1, 16 (*Appx A*)

"*Instrument*"—See sec 2 (14)

"*Improper description*"—This expression, it has been held, will not include a description of stamp appropriate for purposes outside the Stamp Act altogether It is confined to a stamp which is used for the purpose of denoting the Stamp-duty on an instrument, which is improper in a particular case, having regard to the Act and the Rules: *Ref.* (23 All 213)

The same considerations will apply to the use of Telegraph stamps, and, except as provided by Rules 14 and 15 (*e*), also to Postage and Court-fee stamps See also Rule 16 (*Appx. A*). And see G L No 2412 S R, *22nd May*, 1900 (Ben Stamp Manual, 1911, p. 180)

The use of postage stamps was authorised by Notification (*No* 5300 *Exc*, 21st *Sept.* 1905), with effect from 1st October, 1905

"*Is chargeable*"—See sec. 2 (6), and sec 3.

"*Duly stamped*"—See sec. 2 (11).

Instruments impounded how dealt with

38. (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

Note.

Cf Act I, 1879, sec 35

This section prescribes the procedure to be followed by persons, other than Collectors, after impounding an instrument which is not duly stamped See sec 33, *n*

"*Collector*"—See sec 2 (9)

"*An authenticated copy*"—This need not be stamped See Art 24, Ex (*a*)

In making returns to Collectors on account of duty and penalty levied by Civil Courts on instruments, a special form is to be used (*Cal H C. C O No* 16, *4th Dec* 1876)

"*Such instrument*" See sec. 2 (14)

Collector's power to refund penalty paid under section 38, sub-section (1)

39. (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

Note.

Cf. Act I, 1879, sec. 36. Cf. also 54 & 55 Vic. c. 39, s. 15 (3) (*b*).

This section empowers a Collector to refund any penalty imposed under sec. 35 It is silent as to the duty paid under sec 37 But

this may be dealt with under Rule 16, provided an application is made within three months (*App. A*)

The words "upon application made to him in this behalf or, if no application is made, with the consent of the Chief Controlling Revenue authority" have been repealed by the Decentralization Act, 1914. Cases falling under sec. 38 (2) are dealt with by the next section

In the case of instruments executed before the operation of this Act the penalty to be paid, and the procedure to levy it and to obtain a refund would be governed by this Act and not by the Act in force at the date of the instruments. *Ref.* (5 Mad. 394)

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna [or half an anna] only or a bill-of-exchange or promissory-note, he shall adopt the following procedure —

Collector's power to stamp instruments impounded

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be —

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, [an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by the section.

(2) Every certificate under clause *(a)* of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall,

Instruments impounded how dealt with.

38. (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector

Note.

Cf Act I, 1879, sec 35

This section prescribes the procedure to be followed by persons, other than Collectors, after impounding an instrument which is not duly stamped See sec 33, *n*

"*Collector*"—See sec 2 (9)

"*An authenticated copy*"—This need not be stamped See Art 24, Ex (*a*)

In making returns to Collectors on account of duty and penalty levied by Civil Courts on instruments, a special form is to be used *(Cal H C C O No 16, 4th Dec 1876)*

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39. (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

Note.

Cf. Act I, 1879, sec. 36. Cf. also 54 & 55 Vic. c. 39, s 15 (3) (*b*).

This section empowers a Collector to refund any penalty imposed under sec. 35 It is silent as to the duty paid under sec. 37 But

"*Amount required to make up*"—See sec 35, *n* The word 'amount' must be taken to mean a combination of both duty and penalty.

It is clear that it was the intention of the Legislature in the first place to compel the payment of the stamp-duty, together with the penalty By the payment of the stamp duty, the revenue would be protected from loss, and the exaction of a small money-penalty would be a sufficient punishment in the large majority of cases in which the omission to stamp at all, or stamp duly, arises from negligence, inadvertence, or ignorance of the provisions of the Stamp law. *Empress* v *Soddanund Mahanty* (8 Cal 259)

The *duty* chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of execution of it; but the *penalty* to be paid, and the procedure to levy it and to obtain a refund would be governed by the present Act see *Ref.* (5 Mad 394) See also sec 35, *n*

There is no special direction in the clause, but those who desire the admission of the document in evidence should be charged the duty and penalty. This may be recovered afterwards from the proper person under sec 44 *Secretary of State* v. *Basharatullah* (30 All. 271).

Where an offence has been committed under sec. 64 it would not be necessary, nor in fact possible, for a Collector to proceed under this section to collect any duty until it has been decided in a proper enquiry, first, whether the property alleged to be undervalued has been properly valued, and secondly, if not, whether it has been undervalued with intent to defraud Government · *Queen Empress* v. *Venkatrayadu* (12 Mad 231).

Sub-sec (2)—When one fact is declared to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it Indian Evidence Act (1 of 1872) s 4

Instruments unduly stamped by accident.

41. If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna [or half an anna] only or a bill-of-exchange or promissory-note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and [illegible] to pay

to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omisssion to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed

Note.

Cf Act I, 1879, sec 36 and Act XVIII, 1869, sec 24 (b).

This section provides a remedy for *bona fide* cases of 'accident, mistake, or urgent necessity, in respect of all except certain instruments see sec 31, *n* The words 'or half an anna' have been added by Act V of 1906

"*Instrument chargeable with duty*"—See ss 2 (6), (14), and 3

"*Not duty stamped*"—See sec 2 (11)

"*Any person*"—See ss 2 (1), *n*, and 31, *n*

"*Before the Collector*"—See sec, 2 (9) If a Collector feels a doubt as to the duty chargeable, he may refer the matter to the Chief Controlling Revenue-authority under sec 56

"*Execution or first execution*"—See sec 2 (12)

"*Amount required to make up*"—See sec 40, *n*

Endorsement of instruments on which duty has been paid under section 35, 40 or 41

42 (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify, by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that—

(*a*) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month, from the date of such impounding or if the Collector has certified that its further detention is necessary and has not cancelled such certificate

(*b*) nothing in this section shall affect the Code of Civil Procedure, section 144 clause 3 [O. XIII, R. 9]

Note

Cf Act I, 1879, sec 39, and Act XVIII, 1869, sec 25

Sub sec (1)—See ss 33, 38 (2), and 40 (*b*), *ante*

"*The person admitting such*"—See sec 33, *n*

"*Collector*"—See sec 2 (9)

Sub sec (2)—This clause must be read with sec 35, which lays down the rule that no instrument chargeable with duty shall be 'admitted in evidence,' or be 'acted on, registered or authenticated,' unless it is duly stamped It implies that after the duty has been paid, and the fact certified by the Collector, it may be so treated See sec 35 (*a*), *n*

"*Every instrument so endorsed*"—See sec. 2 (14) This means an original instrument A copy cannot be admitted on payment of a penalty in the case of a lost document which was not duly stamped: *Kallu* v. *Halki* (18 All 295), *Ranga Rau* v *Bhavayammi* (17 Mad. 473), *Kopasan* v *Shamu* (7 Mad 440), *Arunachellum Chetty* v. *Olagappah Chetty* (4 Mad H C R. 312); *Raja of Bobbili* v *Inuganti* (23 Mad 49) And see also *Haran Chunder Bhootee* v. *Russick*

see sec 61.

"*As if it had been duly stamped*"—An irregularity in endorsement by a Collector, *e g*, on a promissory-note, which he is not authorized to make, would not prevent the admission of the document in evidence, for the section specially provides that the instrument shall on endorsement be deemed to be duly stamped, and shall be receivable in evidence in all Courts as if originally executed on paper bearing the proper stamp. *Girdhari Das* v. *Jagan Nath* (3 All 115) And see sec. 32, *n*

An application for return of a document under sub-sec. (2) requires no Court-fee (*No 1196, 6th March, 1885*)

Cl. (b)—"No document shall be returned which, by force of the decree, has become wholly void or useless" Act V of 1908, O. XIII, R. 9

to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed

Note.

Cf Act I, 1879, sec 38 and Act XVIII, 1869, sec 24 (b).

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"*Before the Collector*"—See sec, 2 (9) If a Collector feels a doubt as to the duty chargeable, he may refer the matter to the Chief Controlling Revenue-authority under sec 56

"*Execution or first execution*"—See sec 2 (12)

"*Amount required to make up*"—See sec 40, *n*

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify, by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them

Endorsement of instruments on which duty has been paid under section 35, 40 or 41.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct

Provided that—

(*a*) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expiration of one month, from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate

(*b*) nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3 [O. xiii, R. 9]

Note

Cf Act I, 1879, sec 39, and Act XVIII, 1869, sec 25

Sub-sec (1)—See ss 33, 38 (2), and 40 (*b*), *ante*

"*The person admitting such*"—See sec. 33, *n*

"*Collector*"—See sec 2 (9)

Sub sec. (2)—This clause must be read with sec 35, which lays down the rule that no instrument chargeable with duty shall be 'admitted in evidence,' or be 'acted on, registered or authenticated,' unless it is duly stamped It implies that after the duty has been paid, and the fact certified by the Collector, it may be so treated. See sec 35 (*a*), *n*

"*Every instrument so endorsed*"—See sec. 2 (14) This means an original instrument A copy cannot be admitted on payment of a penalty in the case of a lost document which was not duly stamped: *Kallu* v. *Halki* (18 All 295) *Ranga Rau* v *Bhavayamma* (17 Mad 473), *Kopasan* v *Shamu* (7 Mad 440), *Arunachellum Chetty* v. *Olagappah Chetty* (4 Mad H C R 312), *Raja of Bobbili* v. *Inuganti* (23 Mad 49) And see also *Haran Chunder Bhooree* v. *Russick Chunder Neogy* (20 W R 63)

A certificate granted under this section is no bar to a prosecution for any offence which the Collector considers to have been committed: see sec 61.

"*As if it had been duly stamped.*"—An irregularity in endorsement by a Collector, *e.g.*, on a promissory-note, which he is not authorized to make, would not prevent the admission of the document in [illegible]

the proper stamp. *Girdhari Das* v *Jagan Nath* (3 All 115) And see sec. 32, *n*

An application for return of a document under sub-sec. (2) requires no Court fee (No 1196, *6th March*, 1885)

Cl. (b)—"No document shall be returned which, by force of the decree, has become wholly void or useless". Act V of 1908, O xiii, R.

Prosecution for offence against Stamp law

43. The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument

Provided that no such prosecution shall be instituted *in the case of any instrument* in respect of *which such a* penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty

Note.

Cf Act I, 1879, sec 40, and Act XVIII, 1869, sec 24 (*a*)

This section applies only to such instruments as are admissible on payment of duty and penalty under sec 35. It does not apply therefore to instruments chargeable with a one anna or half-anna duty, or to bills of exchange and promissory-notes which are to be dealt with under sec 62 (*a*) Moreover it only refers to cases in which a prosecution is instituted after a penalty has been paid. *Queen-Empress* v *Venkatrayadu* (12 Mad p 233)

"*Any instrument*"—See sec 2 (14)

"*Any person*"—See ss 2 (1), *n* and 62, *n*

"*An offence against the Stamp-law*"—See Ch VII, ss 62—69

The proviso is in accordance with the decision in *Empress* v *Dwarkanath Chowdhry* (2 Cal 399) A similar proviso is appended to sec. 61 (4)

The exaction of a small money penalty would be a sufficient punishment in the large majority of cases in which the omission to stamp at all, or stamp duly, arises from negligence, inadvertence, or ignorance of the provisions of the stamp law. The severer proceeding of a criminal prosecution is intended for those cases only in which there is an intention to evade the stamp-law, and before a prosecution can be instituted, it is incumbent upon the Collector to form an opinion whether it appears to him that such intention existed. *Empress* v *Soddanund Mahanty* (8 Cal p. 261)

Every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion In many cases there may be a reasonable question as to whether any penalty is payable or not, and the duty may be recovered by an order which would be lost by a prosecution He ought, at any rate, to do what the law

commands as his duty before exercising a mere discretion · *Empress* v. *Janki* (7 Bom. 82)

· *Unless it appears to the Collector*"—" The law does not require intention to be *proved* as part of the offence, but to prevent indiscriminate prosecutions, it confines the power of instituting prosecutions to the Collector, and instructs him to exercise it only when it appears to him the offence had been committed with an intention to evade payment of the proper duty He is not required to make a formal enquiry, or to record a proceeding when he gives a sanction in writing for a prosecution It is to be presumed he has governed his decision by the rule prescribed *per* Turner, C J, *Queen Empress* v. *Palani* (7 Mad p 538)

"*Evading payment of duty*·—There is a difference between 'evading the payment of duty, *i e* fraudulently, and avoiding it The latter is a perfectly legitimate proceeding, and may afford interesting occupation to expert draftsmen If a transaction can be carried through by the employment of instruments on which a lighter duty is leviable, there is no reason why recourse should be had to more expensive methods, or even to documents at all, if they can be dispensed with This is precisely what Lord Esher meant when he said—" If a vendor can convey property sold to the purchaser without the execution of any instrument, he can convey it without paying any stamp-duty The subject may have the good fortune to escape the stamp-duty if he can get a conveyance of property sold to him without the execution of any instrument The Crown must make out its right to the duty, and if there be a means of evading the stamp-duty so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing they are perfectly entitled to do The Crown cannot have the stamp-duty unless the parties choose to effectuate the transaction by an instrument which of itself conveys the property, and, if they choose to be satisfied with something less, the matter is not brought within the section" · *per* Lord Esher, M R, *Commissioners* v *Angus* (L. R. 23 Q B D. p. 593)

"If you can evade the rights of the Crown by keeping yourself out of the operation of a statute imposing a tax upon the public you are at perfect liberty to do so " *per* Kelly C. B, *Wale* v. *Commissioners* (L. R 4 Ex. D. p 277)

" What the Stamp Act deals with is not the bargain which arises out of the consent of the parties, but the instrument which records that bargain " . *per* Collins, L. J, *Muller & Co's Margarine Ld* v. *Commissioners* (L. R. [1900] 1 Q B p 319).

And so property may be transferred by delivery without recourse to any instrument at all, and the payment of stamp duty thereby avoided see under sec 2 (10)

Where a bond contained a clause to the effect that the executants being in want of money were unable to procure the necessary stamp and executed the deed on plain paper, but undertook to indemnify the other party as to any penalty which they might have to pay if it became necessary, it was held that it did not amount to an agreement to evade the stamp laws The Judge might have inferred therefrom that such was the *intention* of the parties, but in that case should have heard evidence to the contrary *Shashi Bhusan Banerjee v. Tarachand Rai* (3 B L R, A C 329

The question as to the intention of parties, in not sufficiently stamping a document, to defraud the revenue is not one which properly arises under Reg XVIII of 1827 The language of sec 13, Act XXXVI of 1860, first, and subsequently Act X of 1862, sec 15, in a more explicit manner rendered that question important *Kastu Bhavani v. Appa* (5 Bom p 629)

Sec 61 (4) provides that nothing contained in this section will be a bar to a prosecution under that See also sec 62, *n*

Persons paying duty or penalty may recover same in certain cases

44 (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and by agreement or under the provisions of sec. 29 *or any other enactment in force at the time such instrument* was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for recovery of the amount shall be maintainable

Note.

Cf. Act I, 1879, sec 41.

This provision is intended to stimulate the production of instruments liable to stamp-duty and not properly stamped It frequently

happens that the person interested in putting in evidence an insufficiently stamped document was not bound by law to bear the expense of the stamp that should have been used at the time of its execution, yet he has to bear the penalty incurred through the laches of the actual defaulter In such cases it cannot be doubted that production will be greatly facilitated by the provisions of this section which enable the producer to throw the cost of producing the unstamped document upon another person

"*Any person* "—See sec 2 (1), *n* and sec 62 *n*

"*Any certificate* "—See sec 32

Sub sec (3)—This disposes of the ruling in *Ishar Das* v. *Masud Khan* (6 All 70), which laid down that the only mode of recovery was by a separate suit

Power to Revenue authority to refund penalty or excess duty in certain cases

45 (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess

Note.

Cf Act I, 1879, sec 42, and Act XVIII, 1869, sec. 42, Cf also 54 & 55 Vic., c 39, s 15 (3) (b)

This section is intended to give an informal right of appeal from the Collector to the Chief Revenue-authority. See also sec 39

"*Chief Controlling Revenue-authority*"—See sec. 2 (8)

"*Chargeable.*"—See sec 2 (6)

The section would govern also the procedure as to refunds on instruments executed before the date of operation of this Act : *Ref* (5 Mad 394).

Non-liability for loss of instruments sent under section 38

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Where a bond contained a clause to the effect that the executants being in want of money were unable to procure the necessary stamp and executed the deed *on plain paper, but undertook to indemnify* the other party as to any penalty which they might have to pay if it became necessary, it was held that it did not amount to an agreement to evade the stamp laws. The Judge might have inferred therefrom that such was the *intention* of the parties, but in that case should have heard evidence to the contrary. *Shashi Bhusan Banerjee* v. *Tarachand Kar* (3 B. L. R., A. C. 329).

The question as to the intention of parties, in not sufficiently stamping a document, to defraud the revenue is not one which properly arises under Reg. XVIII of 1827. The language of sec. 13, Act XXXVI of 1860, first, and subsequently Act X of 1862, sec. 15, in a more explicit manner rendered that question important. *Kastur Bhavani* v. *Appa* (5 Bom. p. 629).

Sec. 61 (4) provides that nothing contained in this section will be a bar to a prosecution under that. See also sec. 62, *n*.

Persons paying duty or penalty may recover same in certain cases.

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and by agreement or under the provisions of sec. 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for recovery of the amount shall be maintainable.

Note.

Cf. Act I, 1879, sec. 41.

This provision is intended to stimulate the production of instruments liable to stamp-duty and not properly stamped. It frequently

happens that the person interested in putting in evidence an insufficiently stamped document was not bound by law to bear the expense of the stamp that should have been used at the time of its execution, yet he has to bear the penalty incurred through the laches of the actual defaulter In such cases it cannot be doubted that production will be greatly facilitated by the provisions of this section which enable the producer to throw the cost of producing the unstamped document upon another person

"*Any person* "—See sec 2 (1), *u* and sec 62 *u*

"*Any certificate* "—See sec 32

Sub-sec (3)—This disposes of the ruling in *Ishar Das* v. *Masud Khan* (6 All 70), which laid down that the only mode of recovery was by a separate suit

45 (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Power to Revenue-authority to refund penalty or excess duty in certain cases

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

Note.

Cf Act I, 1879, sec 42, and Act XVIII, 1869, sec. 42, Cf. also 54 & 55 Vic., c 39, s 15 (3) (*b*).

This section is intended to give an informal right of appeal from the Collector to the Chief Revenue-authority. See also sec. 39

"*Chief Controlling Revenue-authority*"—See sec. 2 (8)

"*Chargeable.*"—See sec. 2 (6)

The section would govern also the procedure as to refunds on instruments executed before the date of operation of this Act: *Ref* (5 Mad. 394).

46. (1) If any instrument sent to the Co[illegible] section 38, sub-section[illegible] destroyed or damaged[illegible] mission, the person sendi[illegible] shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 38.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Note.

Cf Act I, 1879, sec 43, and Act XVIII, 1869, sec 25, cl 3

"*Any instrument*"—See sec 2 (14

"*Collector*"—See sec 2 (9)

"*The person sending the same*"—It is only the person who impounds the document, apparently, who is indemnified

Power of payer to stamp bills, promissory-notes and cheques received by him unstamped

47. When any bill-of-exchange, promissory-note or cheque chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented, may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, note or cheque.

Note.

Cf Act I, 1879, sec 44, and Act XVIII, 1869, sec. 26.

This section apparently relates only to Bills Notes and Cheques which are payable on demand and drawn in British India Foreign Bills Notes and Cheques are provided for by sec 19

"*The person to whom it is so presented*,"—This would be in the case of a 'bill-of exchange,' or 'cheque,' the drawee or acceptor and in the case of a 'promissory-note,' the promisor or maker. In the former case it is evident that it is the acceptor who is intended to affix the necessary stamp, and either charge the duty against the person who ought to have paid the same, *viz*, the 'drawer' (sec 29), or deduct it from the sum payable In the latter case this is not so clear. Having regard to the language of the section and the side note, the person

intended to affix the stamp would be the 'maker' of the note, who ought to have affixed it originally (sec. 17), and if so, he is furthermore to charge the duty against the person who ought to have paid it, that is himself; but it is difficult to see why he should be allowed, in the alternative, to deduct it from the sum payable by himself

This has been commented on by Farran, J as follows "It is a curious anomaly that the promisor in the case of a promissory note, who is the person who ought originally to have stamped it, should be at liberty to deduct the value of the stamp from the amount which he pays in discharge of his note *Bhawanji Harbhum* v *Devji Punji* (19 Bom p. 639)

It would seem more natural, in the case of a promissory note, for the 'payee,' or when it has been negotiated the 'holder,' to remedy the defect and charge it against the 'maker'

"*Upon cancelling the same*"—See ss 11, 12

Recovery of duties and penalties

48 All duties, penalties, and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue

Note.

Cf 54 & 55 Vic c 39, s 121, and 53 & 54 Vic c 39, s. 36.

"*Collector*"—See sec 2 (9)

"*The person*"—See ss 2 (1), *n*, and 61, *n*

The liability is a personal one, and does not descend to a man's heir (Ben Stamp Manual, 1911, p 105)

CHAPTER V

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

Allowance for spoiled stamps.

49. Subject to such rules as may be made by the [Local Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 5[0] and if he is satisfied as to the facts, make allowance f[or]

impressed stamps spoiled in the cases hereinafter mentioned, namely —

(*a*) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person :

(*b*) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto

(*c*) in the case of bills-of-exchange, cheques or promissory notes—

(1) the stamp on any bill-of-exchange, or cheque signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill-of-exchange or cheque to be afterwards written thereon :

(2) the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands ·

(3) the stamp used or intended to be used for any bill-of-exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill-of-exchange, or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee : provided that another completed and duly stamped bill-of-exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note

(*d*) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning:

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value.

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is

chargeable, has been paid is an impressed stamp within the meaning of this section.

Note.

Cf Act I, 1879, sec 51, and Act XVIII, 1869, ss 45, 46. Cf also 54 & 55 Vic, c 38, s 9 30 & 31 Vic, c 23, s. 17, and 33 & 34 Vic c 98, s 14

'Local Government' has been substituted for Governor-General by the Decentralization Act, 1914 Clauses (*b*), (*c*) (1) and (2), and (*d*) (7) and the proviso and explanation to (8) are modelled on s 9 of the Stamp Duties Management Act, 1891 (54 & 55 Vic., c. 38)

"*Subject to such rules*—See Rule 17 (*Appx A*) The section makes provision only for impressed stamps, *i e*, impressed paper and labels, and not for adhesive stamps (see G O No 911, 6*th June* 1879). See also Stamp rules (*Appx A*), and sec 2 (13)

"*The Collector may*—See sec 2 (9) The Collector himself is the officer, and no other to whom power is given by law to make enquiries into applications for allowances for spoiled stamps to take evidence on oath in reference thereto and to grant or refuse such application. He cannot delegate this authority Where an application had been made for refund, and the Collector made it over for enquiry to a Deputy Collector, it was held that the latter was not entitled to put the witnesses on their oath Consequently no charge under sec 181 or sec 193 of the Indian Penal Code could be sustained against such witnesses for speaking falsely *Empress v Niaz Ali* (5 All 17)

"*The evidence to be required*—Evidence may be taken in the shape of a statement on oath or solemn affirmation, or of an affidavit, by the applicant or his duly authorized agent, and may be supplemented by the testimony of further witnesses See Rule 17 (*Appx. A*)

"*Within the period prescribed*"—See sec 51, *n*

Cl (a)—This applies only to cases of accidental spoiling of the paper of which the stamp is made, and does not cover cases in which a person has used the paper in the ordinary way, but has made some mistake in using it *Narasimha Charyulu v Appa Rau* (18 Mad 122)

The reason for making an allowance for a spoiled stamp is that the stamp has become unfit for use So where a stamped paper was presented for engrossment of a sale-certificate at a Court sale and was inadvertently punched by some Court officer, it was held the stamp was not rendered unfit for use and no refund was necessary. *Ref.* (18 Mad 235)

"*Before any instrument is executed*"—See sec 2 (8), (14) These words restrict the application of this clause to unexecuted documents

Cl. (b)—This provision presumably relates to cases where a transaction has been carried out by some other means, or has fallen through altogether

Cl (c)—This relates exclusively to the instruments specified

(*1*).—This is the case of a bill or cheque which has not been negotiated

(*2*)—This relates to promissory notes which have not been negotiated.

(*3*)—This provides for the same instruments when they have been replaced by a fresh set of documents duly stamped. In the last case the Governor-General in Council has authorized the Collector of Stamps in Calcutta to renew the stamps used for bills-of-exchange after he has satisfied himself by evidence that a fresh set of bills has been executed in each case, and that application for such renewal has been made within ten working days from the date of the bills-of-exchange

Cl (d)—This provision relates only to documents which have been executed, whether wholly or partly

(*1*) This relates to instruments which are discovered after execution to be void, *i e*, by the parties, not by the Court

(*2*)—This is a similar provision to cl (*a*), but applies to executed documents Where an adjudication has been made by a Collector under sec 31 and a certificate granted, if the instrument becomes useless by the discovery of some clerical error a refund can be obtained of the amount levied *Ref* (11 Mad 37) This might be done under either clause, according as it was executed or not

(*3*)—(*4*)—These sub-clauses seems to cover practically the same ground, as they both provide for cases in which instruments, which have been partially executed cannot be completed, owing to the inability or unwillingness of a material party to affix his signature.

(*5*).—For example take a power-of attorney which has been rendered infructuous by the refusal of the person appointed to act under it.

(*6*)—This provision is similar to cl (*b*), but applies only to to executed documents The words "between the same parties and bearing a stamp of not less value" appear to mean 'between the same parties and for the same consideration' Before the introduction of these words it was held that, where a mortgage deed was stamped and the intended mortgagee subsequently refused to carry out the transaction, and the executants in consequence executed a deed of conditional sale of the same premises in favour of another, a refund might be granted under this provision · *Ref.* (16 Mad 459). The amendment renders this impracticable, but there seems to be no reason why the same thing should not be done under sub-cl (4).

was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or

(*b*) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13,

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless

Note.

Cf Act I, 1879, sec 52 Cf also 54 & 55 Vic, c 38, s 10, and 33 & 34 Vic, c 98, s 15

This section affords relief in cases where a mistake has been made either in the description or the value of the stamp, or where the provisions of sec 13 have been violated

"*Any person*"—See under ss 2 (1), 62

"*Instrument chargeable with duty*"—See sec 2 (6), (14)

"*Within six months*"—See sec 50, *n*

"*Collector*"—See sec 2 (9)

Sections 52 and 54 apply to all kinds of stamps used under the Act, but great caution should be used in refunding the value of adhesive labels (*G O No* 911, 6*th June*, 1879)

Allowance for spoiled or misused stamps how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

(*a*) other stamps of the same description and value, or,

(*b*) if required and he thinks fit, stamps of any other description to the same amount in value; or,

(*c*) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee

Note.

Cf. Act I, 1879, sec. 53 Cf also 54 & 55 Vic, c. 38, s. 11; and 33 & 34 Vic., c. 98, s. 16.

The discretion vested in the Collector by this section is intended to meet the requirements of each case which comes before him There-

fund of the value of stamps under cl. (c) is only fair, because private persons are prohibited from disposing of any stamp, except a one-anna or half anna one, by sale. see sec. 69.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

Allowance for stamps not required for use.

(a) that such stamp or stamps were purchased by such person with a *boná fide* intention to use them ; and

(b) that he has paid the full price thereof ; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

Note.

Cf Act I, 1879, sec 54 Cf also 54 & 55 Vic, c 38, s. 12, and 33 & 34 Vic, c 98, s 17

This section is framed for the benefit of *boná fide* purchasers who may not have found use for the stamps which they have bought, and wish to get rid of them A refund is obtainable subject to a small discount. This is reasonable, because private persons are not allowed to dispose of stamps by sale, with the exception of one-anna or half anna adhesive stamps see sec 69

The proviso embodies the terms of *Res. No.* 2090, 10*th July*, 1884

"*Within six months*"—See ss. 50, n and 52 n

Stamp vendors who buy stamps under discount are only entitled to receive, in the case of a refund, the amount actually paid, and not the full value of the stamps.

55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such de-

Allowance on renewal of certain debentures

benture, the value of the stamp on the original or on the new debenture, whichever shall be less:

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the Governor-General in Council may direct.

Explanation—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes —

(*a*) the issue of two or more debentures in place of one original debenture, the total amount secured being the same,

(*b*) the issue of one debenture in place of two or more original debentures, the total amount secured being the same,

(*c*) the substitution of the name of the holder at the time of renewal for the name of the original holder; and

(*d*) the alteration of the rate of interest or the dates of payment thereof

Note.

Cf 54 & 55 Vic c 38 s 9 (7) (e)

This section involves an important concession. Previous to this the same duty was leviable on each occasion Allowance is also made for certain alterations in the debentures renewed

"*Any duly stamped debenture*"—See ss 2 (11), 8

"*Collector*—See sec 2 (9)

The provision would of course be unnecessary in the case of debentures exempted under sec 8 or Art 27

CHAPTER VI

REFERENCE AND REVISION.

Control of, and statement of case to, Chief Controlling Revenue-authority.

56. (1) The powers exercisable by a Collector under Chapter IV and Chapter V [and under clause (*a*) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-authority

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with

which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision

Note.

Cf Act I, 1879, sec 45

The reference to sec 26 (a) is an amendment by Act XV of 1904.

"*Collector*"—See sec 2 (9)

"*Any instrument is chargeable*"—See sec 2 (6), (14), and sec. 3.

"*Chief Controlling Revenue-authority*"—See sec 2 (8). His control is limited within the bounds specified

Sub sec (1)—This does not empower the Chief Controlling Revenue-authority to interfere with any matter which has been finally or conclusively determined by a Collector or other competent authority, *e g*, under sec 32 or sec 40 (a) *Ref* (25 Mad 752).

Sub-sec (2)—Section 31 being in Ch III a Collector's proceedings would not be open to revision, except as provided herein

Sub-sec (3)—There is apparently no means of contesting the decision except as provided in sec 57

57 (1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case with its own opinion thereon,—

Statement of case by Chief Controlling Revenue-authority to High Court or Chief Court

(*a*) if the case arises in the territories for the time being administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be,

(*b*) if it arises in the [United Provinces of Agra and Oudh] or in Ajmer—to the High Court of Judicature for the North-Western Provinces,

(*c*) if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab or in British Baluchistan—to the Chief Court of the Punjab;

(*d*) if it arises in the Central Provinces [or Berar] to the High Court of Judicature at Bombay,

[if it arises in Burma—to the Chief Court of Lower Burma,]

(*e*) if it arises in any other part of British India—to the High Court of Judicature at Fort William.

(2) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail

Note.

Cf Act I, 1879, sec 46, and Act XVIII, 1869, sec. 41 Cf also 54 & 55 Vic, c 39, s 13, and 33 & 34 Vic, c 97, s. 19

This section provides for references by the Chief Controlling Revenue-authority to the highest Courts of judicature established in India But a case which has once been determined by a Collector under sec 32 or sec 40 cannot be re opened or referred under sec. 57, nor could a High Court entertain such a reference if made. *References* (25 Mad 751, 752) See also sec 32 (3), *n*, and sec 40 (1) (*a*), *n*.

Chief Controlling Revenue authority —See sec 2 (8).

Cl. (b)—A change in the name of the province has been effected by the United Provinces (Designation) Act (VII of 1902)

Cl (c)—As regards the North-West Frontier Province references may be made by the Revenue Commissioner to the Chief Court of the Punjab see N-W F P Law and Justice Regulation (VII of 1901)

If in the territories administered by the Agent to the Governor General in Baluchistan the reference shall also be made to the Chief Court of the Punjab (No 266 *E A*, 26*th Jan* 1900)

Cl (d)—The provision for Burma was introduced by Act VI of 1900, and for Berar by Notification No 3510 *I B 3rd Nov* 1913)

Power of High Court or Chief Court to call for further particulars as to case stated

58 If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein

as the Court may direct in that behalf.

Note.

Cf Act I, 1879, sec. 47, and Act XVIII, 1869, sec 41 (c)

The provisions of this Chapter, it is presumed, will not interfere with the general provisions for reference and revision contained in the Civil Procedure Code, O shi, e g, in questions of unstamped documents being rejected by Civil Courts, or in the Criminal Procedure Code, ss 432-442, in questions arising out of offences under the Stamp law in Criminal Courts See *Enat Mondul* v *Baloram Dey* (3 C W N 581)

"*The case*"—see sec 59, n.

59. (1) The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

Procedure in disposing of case stated

(2) The Court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment

Note

Cf Act I, 1879, sec 48, and Act XVIII, 1869, sec 41 (d) Cf also 54 and 55 Vic c 39, s 13 (3)

This important provision as well as the next have laid the foundation of the bulk of the case law in this country on this subject. In this connection the views expressed by Garth, C J., on the proper method of dealing with questions submitted for decision are valuable :—"I feel very strongly that, in giving an opinion upon questions submitted to us by the Board of Revenue, which may serve in the future as a guide to the Board in imposing taxes upon the public, we are boun to advise upon the *actual facts before us*, and have no right to speculate upon the possible nature of transactions of which we have no certain knowledge". *In the matter of Thomson's Policy* (3 Cal p. 350).

"*Any such case*"—The word 'case' means a matter which has to be disposed of by the Revenue-authorities conformably to the judgment of the High Court on the case referred to it for opinion by the Revenue-authorities An adjudication by a Collector under sec. 32, being final, is not a 'case' such as can be referred under sec. 57, and the High Court would have no power to deal with it if it were referred. 'Case' does not mean a case that has been finally and conclusively disposed of. *Ref.* (25 Mad 751)

"*Conformably to such judgment*"—If the Board of Revenue referred to the High Court the question, 'what is the proper amount of duty payable in a given case ?' and the High Court decided that the amount was less than that fixed by the Collector, then the Board would, it is presumed, be bound to direct a *refund* of the excess paid in that particular case. But it is doubtful if the High Court has the general power to direct refunds of stamp duty (*G. O No* 1314 (*Rev*) 25*th Nov.* 1882); see *Ref* (7 Mad 158) See also the powers of the Revenue-authorities under sec. 45

Statement of case by other Courts to High Court or Chief Court

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (*a*) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior

Note.

Cf Act I, 1879, sec 49, and Act V of 1908, O. xlvi

This section adapts the provisions of the three preceding sections to other Courts : see ss. 57—59, *n*. A similar provision is contained in the Civil Procedure Code of 1908, O. xlvi, Rs 1, 3.

[illegible]

ment was delivered :—' It is not explained how this reference comes to be made by the District Judge. it should have been made, if at all, by the District Munsiff, through the District Judge, but *it does not*

clearly appear that there are grounds for such a reference. The District Munsiff had apparently no doubt as to the amount of the stamp-duty payable on the instrument, and it is in such case only that a Court is authorized to make a reference. The reference is therefore returned to the District Judge. *Ref.* (11 Mad. 38)

Revision of certain decisions of Courts regarding the sufficiency of stamps

61 (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may of its own motion or on the application of the Collector take such order into consideration.

(2) If such Court after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

*(4) The Collector may thereupon, notwithstanding any-*thing contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument :

"Conformably to such judgment"—If the Board of Revenue referred to the High Court the question, 'what is the proper amount of duty payable in a given case?' and the High Court decided that the amount was less than that fixed by the Collector, then the Board would, it is presumed, be bound to direct a *refund* of the excess paid in that particular case. But it is doubtful if the High Court has the general power to direct refunds of stamp duty (*G O No* 1314 (*Rev*) 25*th Nov*. 1882), see *Ref* (7 Mad 158) See also the powers of the Revenue-authorities under sec. 45

Statement of case by other Courts to High Court or Chief Court

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (*a*) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy dispose of the case conformably to such judgment

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior

Note.

Cf. Act I, 1879, sec 49, and Act V of 1908, O. xlvi

This section adapts the provisions of the three preceding sections to other Courts: see ss. 57—59, *n* A similar provision is contained in the Civil Procedure Code of 1908, O. xlvi, Rs. 1, 3

Where a District Munsiff expressed no doubt about the amount of duty payable upon a document, but the District Judge stated the case and referred it for the decision of the High Court, the following judgment was delivered:—'It is not explained how this reference comes to be made by the District Judge. it should have been made, if at all, by the District Munsiff, through the District Judge; but it does not

clearly appear that there are grounds for such a reference. The District Munsiff had apparently no doubt as to the amount of the stamp-duty payable on the instrument, and it is in such case only that a Court is authorized to make a reference The reference is therefore returned to the District Judge' *Ref* (11 Mad 38)

Revision of certain decisions of Courts regarding the sufficiency of stamps

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may of its own motion or on the application of the Collector take such order into consideration

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect and determine the amount of duty with which such instrument is chargeable and may require any person in whose possession or power such instrument then is, to produce the same and may impound the same when produced

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) *The Collector may thereupon, notwithstanding* anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that—

(*a*) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty,

(*b*) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42

Note.

Cf. Act I, 1879, sec 50, and Act XVIII, 1869, sec. 40

This section provides for the revision of the orders of Courts acting under sec 35, but only in respect of the sufficiency of the duty or penalty imposed, and in the interests of the revenue The remedy for excessive imposition of duty lies in ss 39 and 45

Where a document has been admitted in evidence as duly stamped and an apellate Court considers it to be insufficiently stamped, it can deal with it only under this provision *Ref* (8 Mad 564) *Gurupadapa bin Irapa* v *Naro Vithal Kulkarni* (13 Bom. 493); *Punchanund Dass* v *Taramoni Chowdhrain* (12 Cal 64). *Chinnaya Rau* v *Ramaya* (4 Mad p 140), *Sajdar Ali Khan* v *Lachman Das* (2 All. 554)

Sub-sec. (1) —As to criminal proceedings, see sec. 35 (*d*)

"*Any instrument*"—See sec 2 (14).

"*On the application of the Collector*"—see sec. 2 (9)

Sub sec. (4)— Neither the admission of an instrument under sec 35 nor a certificate endorsed under sec 42 can bar a prosecution, but it is difficult to see the application of sec 43 in this connection

Cl. (a) —This proviso is similar to sec. 43, though the latter speaks only of penalty

"*Evading payment of duty.*"—See sec 43, *n*.

Cl. (b) —This merely emphasises the purpose of the section. See also sec. 36, *n*

CHAPTER VII

Criminal Offences and Procedure

62 (1) Any person—

Penalty for executing, etc, instrument not duly stamped

(*a*) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill-of-exchange, cheque or promissory-note without the same being duly stamped, or

(*b*) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, or

(*c*) voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punishable with fine which may extend to five hundred rupees

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

Note.

Cf Act I, 1879, sec. 61 ; Act XVIII, 1869, ss. 29, 30 ; and Act VI, 1882, sec. 35 (2) Cf also 54 & 55 Vic, c 39, ss 38, 107 ; and 33 & 34 Vic, c. 97, ss 54, 127

Sub-sec.(1)—This section provides for the punishment of certain offences against the Stamp law arising out of the execution or

employment of instruments which are not duly stamped Clause (*a*) embraces all the stages in the negotiation of certain specified instruments, *viz*, 'bills,' 'cheques' and 'notes', while clause (*b*) comprises all other instruments

Cl. (a).—It will be observed that this provision relates to a class of instruments which are excluded from the benefits of sec. 35, that is to say, *instruments which cannot be validated by the payment of the* proper duty and penalty For these instruments there is no other penalty than that provided by sec 62, and consequently sec. 43, which deals only with the other class of instruments referred to in sec 35 (*a*), would have no application

The question therefore of intention to evade duty would not arise, nor would a Collector, when instituting or sanctioning a prosecution under sec 70, be bound to consider it Under the Act of 1869 it was held that intention to evade payment of duty was not an essential ingredient in the offence described in sec 29 of that Act, *Ref* (6 Mad H. C Rul p x)

But though this is so, the question of intention is nevertheless a very material one for a Magistrate to consider when determining the punishment to be imposed, upon a conviction for such an offence "It may be true that the Collector is not bound to offer any evidence of intention, or even to state the reasons which induced him to prosecute but the question of intention is, nevertheless, one which the Magistrate is bound to consider, and he must hear the statement of the accused and any evidence which he may offer in reference to it A Collector may have formed his conclusion on insufficient grounds, or have ordered a prosecution without due consideration; and the Magistrate is not bound to be guided, so far as the question of penalty is concerned, by the mere fact of the prosecution having been instituted '*per* Garth, C J, *Empress* v *Dwarkanath Chowdhry* (2 Cal p. 403)

"A Magistrate is bound for the purpose of ascertaining whether any and what penalty should be imposed, to consider the question whether a person prosecuted under the Stamp Act had an intention to defraud the Government by using a stamp of less value than that required by law The amount of fine to be imposed is left altogether to the discretion of the Magistrate, a maximum limit only being fixed by the law. It is impossible for the Magistrate to exercise any discretion in fixing the fine, or to say what fine ought in any particular case to be imposed, unless he is at liberty to determine whether the person prosecuted has used no stamp or an insufficient one from a *bonâ fide* mistake, or from carelessness, or with intent to evade payment of the stamp duty" If a person had been led into error in stamping an instrument by some Registrar of whom he had sought advice, he would still be liable to conviction; but, if a Collector were so unreasonable as to prosecute in such a case, a Magistrate would, if

was held, be bound to consider the facts put forward by the defendant, and give effect to the defence of *bona fides* by discharging the accused with nominal fine A *bonâ fide* mistake may not be a *complete* defence, even if proved beyond a doubt, but it cannot be said that it is *no* defence, *Id* See also *Queen-Empress* v. *Venkatrayadu* (12 Mad p 233) *Emperor* v *Dungar Singh* (31 All 36)

It is to be observed moreover that the words "shall be *punishable*" have been substituted for "shall be *punished*" in the former Acts, which would seem to obviate the necessity of a Magistrate's recording a conviction upon mere proof of the commission of any of the acts specified The foregoing observations will apply also to instruments chargeable with a one anna or half-anna stamp-duty and not duly stamped, which fall under clause (*b*) They belong also to the class of instruments which are excluded from sec 35 (*a*) As to 'discretion see sec 35, *n ante*

"*Drawing, making, accepting, &c* —If an instrument called a promissory-note or other document of that kind, and as such liable to duty, is not duly stamped, the person subject to penalty is the person who makes it and not the person in whose favour it is made. The latter, if he allows the omission of the stamp duty to take place, incurs the risk of being debarred from producing it in evidence, but he does not render himself liable to penalty *Queen* v *Nadi Chand Poddar* (24 W R Cr 1)

The term 'accepting' does not mean receiving but executing as an acceptor To receive a promissory-note not duly stamped and put it in suit is not an offence under this section *Queen* v *Gulam Hussain* (7 Mad 71)

Cl. (b) —This provision includes all instruments other than those specified in cl (*a*) It relates therefore to instruments which may be validated under sec 35, by the payment of the proper duty and penalty, including those chargeable with a one-anna or half-anna duty which have been referred to above The former class, it will be observed, fall within the purview of sec 43, which provides that when a penalty has been paid a prosecution shall not be instituted "unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty." Clause (*b*) must therefore be read with and subject to the proviso contained in Sec 43, and the similar provision contained in sec. 61 (4) (*a*)

The question of intention is consequently one which a Collector here has to consider before he institutes or sanctions a prosecution under sec. 70 As to the evasion of duty see sec. 43, *n* And see also sec 70

"*Executing or signing.* —See sec. 2 (12) To draft an unstamped deed of agreement, under instructions, and note the fact at the foot

thereof with signature, is no offence Nor is it an offence to sign the same as an attesting witness, otherwise it would be impossible for a person safely to attest the execution of a document without first satisfying himself that the parties had rightly calculated the value of the stamp. *Ref* (3 Mad H C Rul xxvii).

Where certain parties to an arbitration signed the award, not as witnesses but by way of assent, though this was unnecessary, it was held that they were not liable under this clause because the award was not stamped *Emperor* v. *Brij Lal Sonan* 32 All 198)

"*Otherwise than as a witness* —This means the writing of a person's name by himself, or by his authority, with the intention of authenticating a document as being that of the person whose name is written *Queen-Empress* v *Khetter Mohun Chowdhry* (27 Cal. p 332) And see sec 2 (12), *n*

So also the mere engrossing of a document requiring a stamp on unstamped paper was held to constitute no offence *Reg* v. *Jethlin Sala* (1 Bom H C R 37), *Reg* v *Jetha Moti* (2 Bom H C R 135)

A donee under a deed of gift, which is insufficiently stamped, is not liable to punishment *Ref* (6 Mad H C Rul x).

Where a debtor paid his creditor a sum of money and accepted a receipt without a stamp, promising to affix one himself, it was held that he had not committed the offence of abetment of making an unstamped receipt for he did not aid the offence by any act, because he did nothing, nor by any illegal omission, for he did all he could do, he asked for a stamped receipt, and, on being informed that it was impossible to give him one, as the creditor had no stamp, he took the only thing he could get, that is the receipt without the stamp : *Queen Empress* v *Mithu Lal* (8 All 18

But the acknowledgment by letter of the receipt of a cheque for Rs 100, the letter not being stamped, is punishable under this section *Queen Empress* v *Muttrulandi* (11 Mad 329), see also *Ref* (8 Mad 11)

"*Instrument chargeable with duty*"—See ss 2 (6), (14), and 3

Cl. (c)—The person voting or attempting to vote under a proxy not duly stamped is liable independently of the person executing such proxy, who would, it is presumed, also be liable under the section

Sub sec. (2)—This is taken from the Indian Companies Act (VI of 1882) sec. 35, and was originally borrowed from the English Stamp Act, 1870. And see also the Indian Companies Act (VII of 1913) ss 43 48

"*Be punishable with a fine*"—These words have been substituted for "shall forfeit," in consequence, no doubt, of the views expressed in *Queen-Empress* v *Moore* (20 Cal 676) The terms, as altered, will

admit of a discretion being used as to the amount of fine to be imposed, for a separate liability attaches to the issue of each share warrant, *Id*

"*Not duly stamped*" —See sec 2 (11) and 35, *n*

Knowledge —Where knowledge of a particular fact is an essential element in an offence it must necessarily be proved So also where a fraudulent or dishonest intent is an ingredient, there must be a knowledge of the facts which make the act a fraudulent one There is a large and growing class of statutory offences, where acts previously innocent are forbidden, or acts previously optional are commanded, simply because the State considers such legislation necessary for its own interests, or for the protection of some particular class of the community Here the object of the State is merely to compel the adoption of a particular line of conduct, and the penalties that are imposed are intended, not for punishment, but for prevention, as the only means which the State has at its disposal for the enforcement of its laws In regard to such cases questions have frequently arisen, whether a person is punishable under the statute, when he has violated its provisions in ignorance of the fact on which the violation depends In arriving at this decision, it has been held material to enquire (1) whether the object of the statute would be frustrated, if proof of such knowledge was necessary (2) whether there is anything in the wording of the particular section which implies knowledge, (3) whether there is anything in other sections showing that knowledge is an element in the offence, which is omitted or referred to in the section under discussion, Mayne, 'Criminal Law of India', sec 10

In coming to a conclusion, as to whether knowledge is an element in an offence, a Court may be guided by the general scope of the Act and a comparison of the various sections as well as by the terms of the particular section in question

"We have had quoted the maxim that in every criminal offence there must be a guilty mind, but I do not think that maxim has so wide an application as it is sometimes considered to have In old time and as applicable to the common law or to earlier statutes, the maxim may have been of general application; but a difference has arisen owing to the greater precision of modern statutes It is impossible now to apply the maxim generally to all statutes, and the substance of all the reported cases is that it is necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offence created". *per* Stephen, J, *Cundy v Le Cocq* (L R. 13 Q. B D. 207).

"*Any person.*"—This includes any company or association or body of individuals, whether incorporated or not · General Clauses Act (X of 1897), sec 3 (39)

The term 'person' includes the members of a trading partnership, who may be in contemplation of law the persons who sign, though the hand which actually writes be another's An ordinary agent authorized to sign on behalf of his principal would fall within this description, and consequently within the purview of the section The circumstance that the body of a document was written at the dictation of the manager of a firm would not be sufficient to distinguish the act from that of any other agent, if in fact he signed the firm's name under the authority of the firm *Queen Empress* v *Khetter Mohun Chowdhry* (27 Cal 324)

Liability for acts of agent.—" It is a general rule of law that a master is not criminally responsible for the unauthorised acts of his servants There are, no doubt, certain Acts of Parliament, such as the Licensing Acts, which do introduce an exception in that respect into the general rule " *per* Pollock, B, *Budd* v *Lucas* (L R [1891] 1 Q B p 412), and see *per* Blackburn J, *Queen* v *Stephens* (L R 1 Q B p 710)

" With respect to the question, whether a principal is answerable for the act of his agent in the course of his master's business, and for his master's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved It is true, he has not authorised the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in". *per* Willes, J, *Barwick* v *English Joint Stock Bank* (L R 2 Ex p 265)

A bank as principal is therefore liable to an action for the fraudulent misrepresentation of a manager acting in the course of his business *Id* p 259 See also *The Thetis* (L R 2 A & E 365).

This rule applies to all servants whom the master selects and appoints to do any work or superintend any business, although such servants may not be in the immediate employ or under the superintendence of the master *Laugher* v *Pointer* (5 B & C p 551)

" The law says that for all acts done by a servant in the conduct of his employment, and in furtherance of such employment, and for the benefit of his master, the master is liable, although the authority that he gave is exceeded There is no distinction in this respect between the effects of a tortious and a criminal act, provided such acts are done by the servant in the conduct of his employment and in the interest of his master" *per* Lopes, L. J " I do not at all say that the criminal act may not be of such a character as to induce the jury to say that it could not have been done in furtherance of the master's

business, or at all in the interests of the master. It may well be that the question, whether the offence is a criminal one, may be a material fact for the jury to consider from that point of view, but the mere fact that it is a criminal offence is not sufficient to take the case out of the general rule. The liability of the master does not rest merely on the question of authority, because the authority given is generally to do the master's business rightly, but the law says that if, in course of carrying out his employment, the servant commits an excess beyond the scope of his authority the master is liable." *per* Lord Esher, M. R., *Dyer* v. *Munday* (L. R. [1895] 1 Q. B. p. 746). And see *per* Mellor, J., *Queen* v. *Stephens* (L. R. 1 Q. B. 702).

"A person who puts another in his place to do a class of acts in his absence, necessarily leaves him to determine according to the circumstances that arise when an act of that class is to be done, and trusts him for the manner in which it is done; and consequently, he is held answerable for the wrong of the person so entrusted, either in the manner of doing such an act under circumstances in which it ought not to have been done, provided that what was done, was done not from any caprice of the servant, but in the course of the employment." *per* Willes, J., *Bayley* v. *Manchester, Sheffield and Lincolnshire Railway* (L. R. 7 C. P. p. 420). See also *Seymour* v. *Greenwood* (6 H. & N. 359, 7 H. & N. 355).

Primâ facie a general authority to an agent to conduct a lawful business must be taken to mean an authority to conduct it according to law. The presumption may of course be negatived by showing that the principal had appointed an agent whom he knew to be likely to act in an unlawful manner, or that he had continued to employ him after he had so acted, or that the business was in fact conducted in an unlawful manner for the benefit of the employer in a way which justified an inference that the latter knew of or connived at it. In the absence of such special circumstances, an employer is not in general answerable criminally for the acts of his servant. There are, however, cases in which a statute expressly orders or forbids the doing of a particular act, and imposes a penalty for disobedience. In construing such statutes, the liability of an employer for the act of his agent depends upon exactly the same considerations as those which affect the liability of a man in respect of matters of whose existence he was ignorant. Assuming that the employer was not aware that the agent was doing, or likely to do, the act complained of, it is evident that the same question of knowledge arises in a slightly different form. Mayne, 'Criminal Law of India,' sec. 16.

Having regard to the definition of the term 'person' in the General Clauses Act (*ante*), which includes the members of a trading partnership, it has been held that the partners of a firm are liable, as being in contemplation of the law the persons who sign, though the hand that

The term 'person' includes the members of a trading partnership, who may be in contemplation of law the persons who sign, though the hand which actually writes be another's An ordinary agent authorized to sign on behalf of his principal would fall within this description, and consequently within the purview of the section The circumstance that the body of a document was written at the dictation of the manager of a firm would not be sufficient to distinguish the act from that of any other agent, if in fact he signed the firm's name under the authority of the firm *Queen Empress v Khetter Mohun Chowdhry* (27 Cal 324)

Liability for acts of agent.—" It is a general rule of law that a master is not criminally responsible for the unauthorised acts of his servants There are, no doubt, certain Acts of Parliament, such as the Licensing Acts, which do introduce an exception in that respect into the general rule " *per* Pollock, B, *Budd v Lucas* (L R [1891] 1 Q B p 412), and see *per* Blackburn J, *Queen v Stephens* (L R 1 Q B p 710)

" With respect to the question, whether a principal is answerable for the act of his agent in the course of his master's business, and for his master's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved It is true, he has not authorised the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in" *per* Willes, J, *Barwick v English Joint Stock Bank* (L. R 2 Ex p 265)

A bank as principal is therefore liable to an action for the fraudulent misrepresentation of a manager acting in the course of his business *Id* p 259 See also *The Thetis* (L R 2 A & E 365)

This rule applies to all servants whom the master selects and appoints to do any work or superintend any business, although such servants may not be in the immediate employ or under the superintendence of the master *Laugher v Pointer* (5 B & C p 551)

" The law says that for all acts done by a servant in the conduct of his employment, and in furtherance of such employment, and for the benefit of his master, the master is liable, although the authority [illegible] respect ter [illegible] h acts [illegible] in the interest of his master" *per* Lopes, L. J " I do not at all say that the criminal act may not be of such a character as to induce the jury to say that it could not have been done in furtherance of the master's

business, or at all in the interests of the master It may well be that the question, whether the offence is a criminal one, may be a material fact for the jury to consider from that point of view, but the mere fact that it is a criminal offence is not sufficient to take the case out of the general rule The liability of the master does not rest merely on the question of authority, because the authority given is generally to do the master's business rightly, but the law says that if, in course of carrying out his employment, the servant commits an excess beyond the scope of his authority the master is liable " *per* Lord Esher, M R, *Dyer* v *Munday* (L R [1895] 1 Q B p 746) And see *per* Mellor, J, *Queen* v *Stephens* (L R 1 Q B 702)

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ship, it has been held tha [illegible]
contemplation of the law the persons who sign, though the hand that

actually writes is an agent's *Queen-Empress* v *Khetter Mohun Chowdhry* (27 Cal 324)

But ordinarily there should be some proof that the principal was either present when the agent committed the offence charged, or otherwise authorized it *Golam Hossain Ariff* v *Emperor* (8 C W. N 378)

And so where receipts were given by the officers of a bank, being as such a limited company, and it was found that they had authority to receive money, and that the reception of the money by them was in fact a reception by the bank, they having received it in the ordinary course of business, it was held that the bank was liable for the receipts being unstamped And further that the fact that the motive of such officers may have been to protect themselves as against each other, and not to protect the bank, did not preclude the inference that the receipts were given with the bank's knowledge and authority, and were consequently the bank's receipts *Attorney-General* v *Carlton Bank* (L. R [1899] 2 Q. B 158)

Abetment—'Abet,' with its grammatical variations and cognate expressions, has the same meaning in other Acts as in the Indian Penal Code General Clauses Act (X of 1897) sec 3 (1) The Stamp Act of 1869 contained (sec 36) a special provision for abetment. No such provision, however, has been introduced into any subsequent Act, it being unnecessary owing to the provision cited above

It is not abetment of the execution of an unstamped document to receive it, any more than acceptance of stolen property is abetment of theft *Empress* v *Janki* (7 Bom 82), *Queen-Empress* v *Nihal Chand* (20 All 440), *Empress* v *Gopal Das* (W N [1883] p 145)

'Offence' has been defined to mean any act or omission made punishable by any law for the time being in force, General Clauses Act (X of 1897), sec 3 (37)

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees

Penalty for failure to cancel adhesive stamp.

Note.

Cf Act I, 1879, sec. 62; and Act XVIII, 1869, sec 33 (2). Cf also 54 & 55 Vic, c. 39, 8 (3): 45 & 46 Vic, c. 72, 14 (2); and 33 & 34 Vic, c. 97. s. 24 (2).

The question of 'intention' is apparently not essential to a conviction under this section. But if it appeared that there had been an intention to defraud the Government as well, this would no doubt have an important bearing on the amount of fine to be imposed

see sec 62, n "Punishable has been substituted for 'punished.'

"*Any person*"—See sec 62, n

Where a Government official presented his salary bill to the Treasury for payment through his nephew, with a receipt stamp affixed thereto uncancelled, it was held that the instrument in question was not one contemplated by the first para of sec 12, which applies to cases in which the instrument chargeable with duty may be stamped after execution, and that no offence had been committed under ss 12 and 63 *Queen-Empress* v *Rahat Ali Khan* (9 All 210)

Penalty for omission to comply with provisions of section 27

64 Any person who with intent to defraud the Government,—

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(*c*) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees

Note.

Cf Act I, 1879, sec 63, and Act XVIII, 1869, sec. 34 (*c*). Cf also 54 & 55 Vic, c 39, s 5, and 33 & 34 Vic, c 97, s 10

Intention to defaud the Government is the essential ingredient of the offences made punishable by sec 64 Where property worth Rs. 30,000 had been set forth in a partition-deed as worth only Rs. 7,975, the deficient stamp duty amounting to Rs. 50, it was held that the executant had been rightly convicted under this provision. *Queen-Empress* v. *Venkatrayadu* (12 Mad 231)

"*Any person* —See 62, n

"*Executes any instrument* —See sec 2 (6), (14)

Where a property was sold for Rs 20,000, of which Rs. 1,000 only had been paid, and the purchaser having declined to complete the transaction the property was re conveyed to the vendors, for a nominal consideration of Rs 1,000, without any mention of the balance of the price, this was held to be an infringement of the provisions of sec 27 *Emperor* v *Kameshar Das* (32 All 171).

"*Any other act*"—This would seem to mean any other act of the like nature Otherwise it would cover the same ground as sec. 68 (c).

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(*c*) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees

Note.

Cf Act I, 1879, sec 63, and Act XVIII, 1869, sec 34 (*c*) Cf also 54 & 55 Vic, c 39, s 5, and 33 & 34 Vic, c 97, s 10

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"*Any other act*"—This would seem to mean any other act of the like nature Otherwise it would cover the same ground as sec. 68 (c).

such premium or consideration, make out and execute a duly stamped policy of such insurance, or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punishable with fine which may extend to two hundred rupees

Note.

Cf Act I, 1879, sec 65 Cf also 54 & 55 Vic, c 39, s. 100, and 33 & 34 Vic, c 97, s 118

"*Any person*"—See sec 62 *n*

Cf (a)—This is a special provision

"*Duly stamped policy*"—See sec 2 (11), (19), (20), sec 7, and Art 47

Cf (b) See also sec 62 "Punishable" has been substituted for 'punished'

Penalty for not drawing full number of bills or marine policies purporting to be in sets

67 Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped, the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Note.

Cf Act I, 1879, sec. 66, and Act XVIII, 1869, sec. 32

This is a special provision As each piece of the set is chargeable, if the full number be not completed, there will be a loss to the revenue

"*Any person*"—See sec 62, *n*

'*Executing on paper duly stamped*"—See sec 2 (11), (12)

"Punishable" has been substituted for 'punished'

Penalty for post-dating bills, and for other devices to defraud the revenue

68 Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill-of-exchange or promissory-note bearing a date subsequent to that on which such bill or note is actually drawn or made; or,—

extend to five hundred rupees, or with both

Note.

Cf Act I, 1879 sec 68 and Act XVIII 1869, sec 48 (3)

Cf (a) – This applies to licensed stamp vendors

Cf (b) –Permission to sell stamps purchased in good faith for private use and no longer required has been withheld from private persons as it was calculated to facilitate a practice of keeping stamps for sale to persons desiring to forge instruments of old date A provision has been substituted requiring the Collector to purchase back stamps held by private persons and no longer required by them

"*Other than a one anna or one half anna adhesive stamp*"—This is the only kind of stamp apparently, which may be disposed of by private enterprise But in the United and Central Provinces this prohibition does not apply to the case of a legal practitioner or a banker, who buys a stock of stamps for use in his own business and affixes them, when occasion requires, to the documents he has to draw up in the course of that business, the cost of the stamps being recovered from his client or customer with the rest of his charges The words 'or half an anna' have been added by Act V of 1906

The sale of a Court fee stamp without authority would not be an offence under this section, which has reference to the sale of stamps under this Act only *Empress* v *Jallu* (4 All 216) And see sec. 77

"*Sells or offers for sale*" This would include the case of a thief who exchanges a stolen stamp for a sum of money even though a thief cannot give a legal title by the transaction *Queen-Empress* v *Virasami* (24 Mad 319) "Punishable" has been substituted for 'punished'

70 (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorized by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48

Note.

Cf Act I, 1879, sec. 69, and Act XVIII, 1869, ss. 42, 43 Cf also 54 & 55 Vic, c. 39, s. 121.

It should be clearly set out in the conviction, or be discoverable by a fair reading of the conviction or judgment, what the instrument is in respect of which the penalty is inflicted, how he is liable to the penalty, and what the proper stamp-duty was *Id* And see sec 62, *n*

"*Any offence* —This means any act or omission made punishable by any law for the time being in force General Clauses Act (X of 1897), sec 3 (37)

72 Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force

Place of trial

Note.

Cf Act I, 1879, sec 71

"*Any instrument* —See sec 2 (14).

"*Code of Criminal Procedure* —See Act V of 1898, ss 177—189, which provide for the place of trial

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CHAPTER VIII

SUPPLEMENTAL PROVISIONS

73 Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge

Books, etc to be open to inspection

Note.

Cf 54 & 55 Vic, c 39, s 16; and 33 & 34 Vic., c. 97, s 21

The effect of this section is to oblige every public officer, and therefore every Judge of a Court who is in charge of records of any description to give access to the revenue authorities for the purpose of tracing instruments which are not duly stamped

"*Public officer*"—See Indian Penal Code, sec 21, and Indian Evidence Act, sec 74

Powers to make rules relating to sale of stamps.

74. The Local Government subject to the control of the Governor-General in Council, may make rules for regulating—

(*a*) the supply and sale of stamps and stamped papers,

(*b* the persons by whom alone such sale is to be conducted, and

() the duties and remuneration of such persons

Provided that such rules shall not restrict the sale of one-anna [or half an anna] adhesive stamps

"*The purposes of this Act*"—This expression would seem to indicate that the rules must be consistent with the Act. The words 'consistent herewith' which occurred in the previous Act have been omitted. This would seem to obviate to some extent the difficulty which arose in *Dowlatram Harji* v. *Vitho Radhoji* (5 Bom. p. 197), *Ref* (7 Mad. 176), and *Ref* (8 Mad. 532), as to rules which were inconsistent with this Act being *ultra vires*.

Though in relaxing the provisions of the Act, the Government have in effect asserted that, whatever the restrictions imposed by the Act, it is open to them to make exceptions. *Ref* (7 Mad. p. 158).

The power to make rules includes the power to add to, amend, vary, or rescind. General Clauses Act (X of 1897), sec. 21. As to framing of rules generally, see *Id.*, ss. 20—24.

For these Rules see *Appx. A*.

76. (1) All rules made under this Act, other than rules made under section 74, shall be published in the *Gazette of India*, and all rules made under section 74 shall be published in the local Gazette.

Publication of rules.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

Note.

Cf. Act I, 1879, sec. 57.

The words "have effect as if enacted by this Act" have been substituted for 'have the force of law' in the previous Act.

See sec. 2 (11), *n*, sec. 35, *n*, and Rule I, *Appx. A*.

["**76A.** The Local Government may, by notification in the local official Gazette, delegate—

Delegation of certain powers.

(*a*) all or any of the powers conferred on it by sections 2 (9), 33 (3) (*b*), 70 (1), 74 and 78 to the Chief Controlling Revenue-authority; and

(*b*) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1) (2), 56 (1), and 70 (2) to such subordinate Revenue-authority as may be specified in the notification."]

Note.

This is a new section added by the Decentralization Act (IV of 1914).

"*Public officer*"—See Indian Penal Code, sec 21, and Indian Evidence Act, sec 74

Powers to make rules relating to sale of stamps.

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(*b*) the persons by whom alone such sale is to be conducted, and

(*c*) the duties and remuneration of such persons.

Provided that such rules shall not restrict the sale of one-anna [or half an anna] adhesive stamps

Note.

Cf Act I, 1879, sec 55, and Act XVIII, 1869, sec. 48

The words or 'half an anna' have been added by Act V of 1906 See also sec 69 *n*

Rules under the former Act, so far as they are not inconsistent with the provisions of this Act, would continue in force until superseded by new rules issued hereunder General Clauses Act (X of 1897), sec 24

'Rule' means a rule made in exercise of a power conferred by any enactment, and includes a regulation made as a rule under any enactment *Id*, sec 3 (47)

'Local Government' means the person authorized by law to administer executive government in the part of British India in which the Act or Regulation containing the expression operates, and includes a Chief Commissioner *Id* sec 3 (29)

The breach of any rule framed under sec. 74 is punishable under sec. 69 These rules will be found in the Stamp Manuals issued by various Local Governments from time to time

Power to make rules generally to carry out Act.

75. The Governor-General in Council may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines; which shall in no case exceed five hundred rupees to be incurred on breach thereof.

Note.

Cf Act I, 1879, sec. 56

SCHEDULE I

STAMP DUTY ON INSTRUMENTS

(*See section 3*)

Description of Instrument	Proper Stamp-duty
[ACKNOWL]EDGMENT OF A DEBT	
[exceedin]g twenty rupees in amount or value, [written o]r signed by or on behalf of a debtor [in order] to supply evidence of such debt in any [book (o]ther than a banker's pass book) or on a [separate] piece of paper when such book or paper is left in the creditor's possession Provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property	One anna

Note.

Cf Act I 1879 Art 1 sch 1 and Act XVIII, 1869, Art 5, sch II

"*Written or signed by a debtor*" — An acknowledgment must be signed by or on behalf of a debtor to indicate his assent thereto *Nand Ram* v *Ram Prasad* (2 All 641), *Koonjo Mohun Doss* v *Krishna Chunder Saha* (25 W R 361), *Dulabh Lanmal* v *Rehman Jamal* (14 Bom 510), *Harichand* v *Jivan Sublana* (11 Bom 526)

The words *likhitam khud* meaning 'writer self' written by a debtor in a 'hatchitta' have been held to be sufficient to constitute an acknowledgment of a debt, where it appeared that it was his intention that they should operate as such and were in fact the form adopted for the purposes of a signature *Sadasook Agarwalla* v *Baikanta Nath Basuma* (31 Cal 1043)

And where certain words were written at the commencement and also at the end of a letter, neither of which were an actual signature of the name of the writer, they were held to constitute an acknowledgment of a debt *Gangadharrao Venkatesh* v *Shidramappa Baluji Desai* (18 Bom 586) And see *Andirji Kalyanji* v *Dulabh Jeevan*, *Jekisan Bapuji* v *Bhowsar Bhoga Jetha* (5 Bom 88, 89) See also sec 2 (12), *a*

Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment, [illegible]

is a question depending in each case upon the form and intention of the entry: *Binjaram* v *Rajmohun Roy* (8 Cal. 282). *Bishamber Nath* v. *Nand Kishore* (15 All 56). *Sitaram* v *Ramprosad* (19 Cal L J 87)

"*To supply evidence of such debt*"—In each case the instrument must be carefully examined in connection with the surrounding circumstances to ascertain whether it has been signed to supply evidence of a debt *Mulji Lala* v *Lingu Makaji* (21 Bom p 205)

An acknowledgment of a debt within the meaning of sec. 19 of the Limitation Act would not necessarily be liable to duty under Art. 1: *Ambica Dat Vyas* v *Nityanund Singh* (30 Cal 687); *Bishamber Nath* v. *Nand Kishore* (15 All 56)

Where an account in a *hatchitta* has two sides to it, the one headed 'Amount advanced' and the other 'Amount received,' the seal or signature of the borrower against each entry of advance is not an acknowledgment of a debt, and requires no stamp *Brojender Coomar* v *Bromomoye Chowdhrani* (4 Cal 885), *Brojo Gobind Shaha* v. *Golak Chunder Shaha* (9 Cal 127) *Nand Kumar Shaha* v *Shurnomoyi* (15 Cal 162) *Dulmia Kunwar* v *Mahadeo Prasad* (28 All. 436). *Galstaun* v *Hutchison* (39 Cal 789)

An I O U is not liable to duty under the English Acts. see *Childers* v *Boulnois* (D & R 8), *Fisher* v *Leslie* (1 Esp 426), *Gould* v *Coombs* (1 C B 543), *Israel* v *Israel* (1 Camp 499)

See also ss 2 (5), *n*, 23 and 35, *n*, *ante*

For the kind of stamp to be used, see sec 11 (*a*), and *Appx A*

2 ADMINISTRATION-BOND including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889—	
(*a*) where the amount does not exceed Rs 1,000	The same duty as a Bond (No 15) for such amount
(*b*) in any other case	Five rupees

Note

Cf Act I, 1879, Art 2, sch 1, and Act VI, 1889, sec 18 (3)

Under the Indian Succession Act (X of 1865) and the Probate and Administration Act (V of 1881) such a bond is required for due administration from a person who has obtained a grant of letters of administration Under the Government Savings Banks Act (V of 1873) it is taken from the person to whom a deposit is entrusted on the death of a depositor Under the Succession Certificate Act (VII of 1889) it is taken from the grantee of a certificate for the collection of debts of a deceased person The duty is limited to Rs. 5 in any case. See Art 57, *n*

For the kind of stamp to be used, see *Appx. A*

3 ADOPTION-DEED, that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	Ten rupees

Note.

Cf. Act I, 1879 Art 38, sch. i

"*Recording an adoption.*—These words are expressly intended to include for taxation instruments of this character, as very valuable rights are frequently conveyed thereby. The provision disposes of two rulings under the former Act, which laid down that such documents were not liable to duty: *In the matter of Amlai* (13 Bom 280);

is a question depending in each case upon the form and intention of the entry *Binjaram* v. *Rajmohun Roy* (8 Cal 282): *Bishamber Nath* v. *Nand Kishore* (15 All 56), *Sitaram* v *Ramprosad* (19 Cal. L. J 87)

"*To supply evidence of such debt*"—In each case the instrument must be carefully examined in connection with the surrounding circumstances to ascertain whether it has been signed to supply evidence of a debt *Mulji Lala* v *Lingu Makaji* (21 Bom p 205)

An acknowledgment of a debt within the meaning of sec 19 of the Limitation Act would not necessarily be liable to duty under Art 1 *Ambica Dat Vyas* v *Nityanund Singh* (30 Cal 687); *Bishamber Nath* v *Nand Kishore* (15 All 56)

Where an account in a *hatchitta* has two sides to it, the one headed 'Amount advanced' and the other 'Amount received,' the seal or signature of the borrower against each entry of advance is not an acknowledgment of a debt, and requires no stamp *Brojender Coomar* v *Bromomoye Chowdhrani* (4 Cal 885) *Brojo Gobind Shaha* v. *Golab Chunder Shaha* (9 Cal 127), *Nund Kumar Shaha* v *Shurnomoyi* (15 Cal 162), *Dulmoni Kunwar* v *Mahadeo Prasad* (28 All. 436).

An I O U is not liable to duty under the English Acts see *Childers* v *Boulnois* (D & R 8), *Fisher* v *Leslie* (1 Esp 426); *Gould* v *Coombs* (1 C B 543) *Israel* v *Israel* (1 Camp 499)

See also ss 2 (5), *n*, 23 and 35, *n*, *ante*

For the kind of stamp to be used, see sec 11 (*a*), and *App* A

2 ADMINISTRATION-BOND	
including a bond given under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889—	
(*a*) where the amount does not exceed Rs 1,000	The same duty as a Bond (No 15) for such amount
(*b*) in any other case	Five rupees

Note

Cf Act I, 1879, Art 2, sch. i and Act VI, 1889, sec 18 (3)

Under the Indian Succession Act (X of 1865) and the Probate and Administration Act (V of 1881) such a bond is required for due administration from a person who has obtained a grant of letters of administration Under the Government Savings Banks Act (V of 1873) it is taken from the person to whom a deposit is entrusted on the death of a depositor Under the Succession Certificate Act (VII of 1889) it is taken from the grantee of a certificate for the collection of debts of a deceased person The duty is limited to Rs 5 in any case. See Art 57, *n*

For the kind of stamp to be used, see *Appx. A*.

3. ADOPTION-DEED,	
that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	Ten rupees

Note.

Cf. Act I, 1879 Art 38, sch. i.

"*Recording an adoption*—These words are expressly intended to include for taxation instruments of this character, as very valuable rights are frequently conveyed thereby. The provision disposes of two rulings under the former Act, which laid down that such documents were not liable to duty : *In the matter of Ambai* (13 Bom 280),

and *In the matter of Hanmapa* (13 Bom 281)

It is not upon the adoption, but the deed which records it that the duty is levied, when it is in fact a conveyance of property and is intended to be used as a document of title to property

For the kind of stamp to be used, see *Appx A*

ADVOCATE

See ENTRY AS AN ADVOCATE (NO 30)

4. AFFIDAVIT,

including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing	One rupee

Exemptions

Affidavit or declaration in writing when made—

(*a*) as a condition of enlistment under the Indian Articles of War,

(*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court or

(*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance

of being used or filed in any Court or before the officer of any Court ' The mere fact that it suited the convenience of the party making the affidavit to make it at Sirsi, instead of going for that purpose to the Court at Karwar where she purposed to file it does not, we think, take the instance out of the words or the intention which may reasonably be imputed to the Legislature When a Statute requires that something shall be done forthwith or 'immediately' or even 'instantly, it would probably be understood as allowing a reasonable time for doing it —Maxwell on 'Statutes From examination of the dates we think we may infer that the purpose existed at the time the affidavit was made of filing it in the Court at Karwar, and that this purpose was carried out promptly *In re Shesamma* (12 Bom 276)

Cl (c) —See Act XVIII of 1869, sec 15

For the kind of stamp to be used, see *App A*

5 AGREEMENT OR MEMORANDUM OF AN AGREEMENT -

[(a) if relating to the sale of a bill of exchange	Two annas
(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate	Subject to a maximum of ten rupees, one anna for every Rs 10,000 or part thereof of the value of the security or share
(c) if not otherwise provided for ...	Eight annas]

Exemptions.

Agreement or memorandum of agreement—

(a) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No 43,

(b) made in the form of tenders to the Government of India for or relating to any loan,

(c) made under the European Vagrancy Act, 1874, section 17.

Note.

Cf Act I, 1879, Art 5, sch I, and Art. 2, sch II; and also Act XVIII, 1869, Art 11, sch II *(App D)* Cf also 54 & 55 Vic, c 39

This Article has been amended by Act VI of 1910

and *In the matter of Hira* [illegible] (13 Bom 281)

It is not upon the adoption, but the deed which records it that the duty is levied, when it is in fact a conveyance of property and is intended to be used as a document of title to property

For the kind of stamp to be used see *App. A*

ADVOCATE

See ENTRY AS AN ADVOCATE (No. 30)

4 AFFIDAVIT

including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing	One rupee

Exemptions

Affidavit or declaration in writing when made—

(*a*) as a condition of enlistment under the Indian Articles of War

(*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court or

(*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance

Note.

Cf Act I, 1879, Art 5, sch I, Art 1, sch II, and Act XVIII 1869, sec 3 (i) Cf also 54 & 55 Vic, c 39, sch

A joint affidavit by two persons has been held to require but one stamp *Reversionary Interest Society* v *Commissioners* (22 T.L R 740)

Cl (a) —This was first announced by Not No 7516, 31*st Dec*, 1874

Cl (b) —The reason for this exemption probably is that it would be either accompanied by or embodied in a petition, which would be chargeable under the Court-fees Act (VII of 1870) Nevertheless the practice apparently prevails in some of the High Courts as well as elsewhere, to levy a stamp fee for the services of a public officer who is appointed to swear and attest an affidavit

"*Immediate purpose*"—This means 'direct' or 'sole purpose' An affidavit made by S before the Nazir and clerk of the Subordinate Judge's Court to the effect that she was the daughter and legal representative of one of the defendants in a certain case, and that she urgently needed copies of certain records of the said case for presentation in another suit which had been instituted against her, was held to be exempted from stamp-duty "The question depends on the construction of the words 'for the immediate purpose

of being used or filed in any Court or before the officer of any Court ? The mere fact that it suited the convenience of the party making the affidavit to make it at Sirsi, instead of going for that purpose to the Court at Karwar, where she purposed to file it, does not, we think, take the instance out of the words or the intention which may reasonably be imputed to the Legislature When a Statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly,' it would probably be understood as allowing a reasonable time for doing it —Maxwell on 'Statutes' From examination of the dates we think we may infer that the purpose existed at the time the affidavit was made of filing it in the Court at Karwar, and that this purpose was carried out promptly *In re Sheshamma* (12 Bom 276)

Cl (c) —See Act XVIII of 1869, sec 15

For the kind of stamp to be used, see *Appx A*

5 AGREEMENT OR MEMORANDUM OF AN AGREEMENT -

[(*a*) if relating to the sale of a bill of exchange	Two annas
(*b*) if relating to the sale of a Government security or share in an incorporated company or other body corporate	Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share
(*c*) if not otherwise provided for ..	Eight annas]

Exemptions.

Agreement or memorandum of agreement—

(*a*) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No 43,

(*b*) made in the form of tenders to the Government of India for or relating to any loan,

(*c*) made under the European Vagrancy Act, 1874, section 17

Note.

Cf Act I, 1879, Art 5, sch 1, and Art 2, sch II; and also Act XVIII, 1869, Art 11, sch II (*Appx. D*) Cf also 54 & 55 Vic, c 39

This Article has been amended by Act VI of 1910.

an instrument styled a rent note whereby the executant agreed to pay Rs 21 2, in two instalments, for the grazing of buffaloes for a certain period, and further undertook in default of payment of the first instalment to pay the whole amount together, and in default of payment of the latter during the period fixed, to pay interest at a certain rate, and for the grazing of additional buffaloes to pay Rs 5 per head, and for other animals at the rate of 8 annas each: *In re [illegible]* (13 Bom [illegible])

an acknowledgment of a debt containing a provision for the future payment of interest *[illegible] v. Ganesh Raghunath* (25 Bom 373) *[illegible] v. [illegible] Biswas* (35 Cal 111)

A contract note containing a clause for submission to arbitration *Hurd[illegible] Mull v. Ahmad Musaji* (13 C W N 63) But this was reversed on appeal in *Baijnath v. Ahmed Musaji* (40 Cal 219)

See also Bond, sec 2 (5), *n* and Conveyance, sec 2 (10), *n*

The following have been held not to be agreements requiring to be stamped—

letters written by parties authorizing arbitrators to arbitrate between them, although together they might be used as evidence of a verbal agreement to submit to arbitration *Gangaram Kushaba v. Narayan Babaji* (19 Bom 32)

letters relating to the sale of shares not intended to be a formal expression of the terms of an agreement, but from which an agreement might by process of construction be inferred *Rainer v. Gould* (13 Mad 255) But see also sec 35 (c), *n*

a petition informing the Court of an agreement entered into by the parties *Ref* (8 Mad 15) *Ram Dayal v. Dhooley* (3 N.-W. P 14)

a prospectus of a school which stated that the terms were sixty guineas per annum, and that three months' notice, or payment was required previously to the removal of a pupil *Clay v. Crofts* (20 L. J. Ex. 361), *Edgar v. Blick* (1 Stark 464) But it was held otherwise where an action was brought on an agreement contained in a prospectus of terms *Williams v. Stoughton* (2 Stark. 292)

an advertisement offering a reward of £100 upon a certain event *Carlill v. Carbolic Smoke Ball Co* (L. R [1892] 2 Q. B. p 490)

'Hiring agreements' or 'agreements for service' would be chargeable under this clause: *Mutsaddi Lal v. Harkesh* (36 All. 11) It has been held otherwise under the English Stamp Act in *National Telephone Co. v. Commissioners* (L. R. [1899] 1 Q B. 250)

Under sec. 23A certain instruments connected with the mortgage of marketable securities have been made chargeable under cl. (c).

"*Otherwise provided for*."—An agreement in writing to lease is chargeable as a lease: see Art. 35. An agreement to make a settlement is chargeable as a settlement: see sec. 2 (24). And an agreement to partition property, as an instrument of partition: see sec. 2 (15). But an agreement to convey would be chargeable as an agreement: see 2 (10), n. See also Art. 6.

an agreement under the Land Acquisition Act (I of 1894 s. 51), as well as a copy of it, is exempt.

Ex. (a)—The intention is to exempt *bonâ fide* sales and purchases of merchandise from stamp duty. The test which should be applied is to see whether the document evidences only a transaction of sale or a sale and some other independent transaction, and if the former the number of subsidiary stipulations it may contain cannot alter the nature of the transaction. *Kyd* v. *Mahomed* (15 Mad. 150). *Ref.* (10 Mad. 27).

A stipulation to refer disputes arising out of the contract to arbitration would not affect the application of this clause. *The Bombay Co., Ld.* v. *National Jute Mills Co., Ld.* (39 Cal. 669.)

"*The sale of goods or merchandise*."—"The expression 'goods and merchandise' is not an equivalent for moveable property, but is

the shape of trees and other produce of land to be cut and removed and a contract for an interest in land will be found collected in Benjamin on Sales." *per* Farran, C. J., *Vohra Mahamadali* v. *Ramchandra* (22 Bom. p. 787).

An agreement to deliver cotton in exchange for cotton seeds would not come within the exemption, for it would not relate to a sale, but to an exchange of goods: *Sannaratmal Uttamchand* v. *Govind* (25 Bom. 696).

"*Not being a Note or Memorandum*."—These words can only mean that where an agreement is contained in a document of the nature of a note or memorandum chargeable under Art. 43 it should be stamped accordingly. *Ralli* v. *Caramalli Fazal* (14 Bom. p. 110).

For the kind of stamp to be used, see sec. 11 and *Appx. A*. For further exemptions from duty, see *Appx. B*.

AGREEMENT TO LEASE

See LEASE (No. 35).

6 [AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—

(1) the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or

(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement	The same duty as a Bill-of-Exchange [No 13 (b)] for the amount secured
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of-Exchange [No. 13 (b)] for the amount secured.

Exemption

Instrument of pawn or pledge of goods if unattested]

Note.

Cf Act I, 1879, sch 1, Art 29 Cf also 54 & 55 Vic, c 39, s 86 (2); and 51 & 52 Vic, c 8, s 15

This article has been re constructed and introduced in its present form by Act XV of 1904 This has been done partly with a view to define more clearly the nature of the transactions intended to be covered by it, and partly to remove a doubt that existed regarding the signification of the term 'hypothecation' as used This word has been omitted from the new article, and the term 'pawn or pledge' substituted in order to limit its application expressly to such transactions The effect of this is tha tall transactions by which moveable property is simply appropriated by way of security for the discharge of a debt without parting with its possession (as for example bills of sale of stock-in trade) are outside the scope of the article, and are consequently liable to the duty leviable on mortgage-deeds, as being instruments "whereby

one person transfers or creates to, or in favour of another a right over, or in respect of, specified property ' The article is confined to instruments of equitable mortgage to the exclusion of agreements to execute a future mortgage

The article as it stood was intended to cover cases of loans made (1) on the deposit of title deeds, (2) on the deposit of valuable securities and (3) upon the pledge, pawn or hypothecation of moveable property, the duty chargeable varying according as the loan was repayable within a period not exceeding three months, or beyond that period but not exceeding one year There was no provision for cases of loans repayable after longer periods The provision relating to the deposit of valuable securities has been omitted, and a new section, 23A, has been introduced which provides that instruments accompanying a deposit of marketable securities shall be chargeable as agreements under Art 5 *(c)* with a duty of eight annas This is in accordance with sec. 23 of the English Stamp Act of 1891

Article 40 deals with cases in which the interest in, or right over, property is transferred, whether possession is given or not, for the purposes of the mortgage, while Art 6 is limited to cases where moveable property only is given in pledge, coupled with an agreement securing the repayment of a loan *In the matter of Ko Shway Aung* v *Strang Steel & Co* (21 Cal p 244) *Ref* (8 Mad p 107). See also Art 40, *r*

Cl. (1) —The most common class of case to which this article would apply would be that of an ordinary equitable mortgage by deposit of title deeds accompanied by a memorandum of charge *Queen-Empress* v. *Debendra Krishna Miller* (27 Cal 587)

Where title-deeds are deposited by way of equitable mortgage, a memorandum merely stating the purpose for which they are deposited is not an agreement for a mortgage. It is a mere record of the purpose for which the deposit is made, and need not be stamped· *Meek* v *Bayliss* (31 L J. Ch. 448)

For a description of 'equitable mortgages' see Fisher, 'Law of Mortgage' (6th Ed), para 24

Cl. (2) —There are three kinds of security the first, a simple lien ; the second, a mortgage, passing the property out and out ; the third, a security intermediate between a lien and a mortgage—*viz*, a pledge—where by contract a deposit of goods is made a security for a debt, and the right to the property vests in the pledgee so far as is necessary to secure the debt" *per* Willes, J 1 *Halliday* v *Holgate* (L R. 3 Ex. p. 302)

A pledge or pawn is a bailment of goods by a debtor to his creditor to be kept till the debt is discharged · Wharton

6 [AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—

(1) the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or

(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the re payment of money advanced or to be advanced by way of loan or an existing or future debt—

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement	The same duty as a Bill-of-Exchange [No 13 (b)] for the amount secured
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of-Exchange [No 13(b)] for the amount secured

Exemption

Instrument of pawn or pledge of goods if unattested.]

Note.

Cf Act I, 1879, sch I, Art 29 Cf also 54 & 55 Vic, c 39, s 86 (2); and 51 & 52 Vic, c 8, s 15

This article has been re-constructed and introduced in its present form by Act XV of 1904 This has been done partly with a view to define more clearly the nature of the transactions intended to be covered by it, and partly to remove a doubt that existed regarding the signification of the term 'hypothecation' as used This word has been omitted from the new article, and the term 'pawn or pledge' substituted in order to limit its application expressly to such transactions The effect of this is that all transactions by which moveable property is simply appropriated by way of security for the discharge of a debt without parting with its possession (as for example bills of sale of stock in trade) are outside the scope of the article, and are consequently liable to the duty leviable on mortgage-deeds, as being instruments "whereby

one person transfers or creates to or in favour of another a right over, or in respect of, specified property The article is confined to instruments of equitable mortgage to the exclusion of agreements to execute a future mortgage

The article as it stood was intended to cover cases of loans made (1) on the deposit of title deeds (2) on the deposit of valuable securities and (3) upon the pledge, pawn or hypothecation of moveable property, the duty chargeable varying according as the loan was repayable within a period not exceeding three months, or beyond that period but not exceeding one year There was no provision for cases of loans repayable after longer periods The provision relating to the deposit of valuable securities has been omitted, and a new section, 23A, has been introduced which provides that instruments accompanying a deposit of marketable securities shall be chargeable as agreements under Art 5 (*c*) with a duty of eight annas This is in accordance with sec 23 of the English Stamp Act of 1891

Article 40 deals with cases in which the interest in, or right over, property is transferred, whether possession is given or not, for the purposes of the mortgage, while Art 6 is limited to cases where moveable property only is given in pledge, coupled with an agreement securing the repayment of a loan *In the matter of Ko Shway Aung* v. *Strang Steel & Co* (21 Cal p 244) *Ref* (8 Mad p 107). See also Art 40, *n*

Cl. (1)—The most common class of case to which this article would apply would be that of an ordinary equitable mortgage by deposit of title-deeds accompanied by a memorandum of charge *Queen-Empress* v. *Delendra Krishna Miller* (27 Cal 587)

Where title-deeds are deposited by way of equitable mortgage, a memorandum merely stating the purpose for which they are deposited [illegible]

For a description of 'equitable mortgages' see Fisher, 'Law of Mortgage' (6th Ed), para 24

Cl. (2)—There are three kinds of security, the first, a simple lien; the second, a mortgage, passing the property out and out; the third, a security intermediate between a lien and a mortgage—*viz*, a pledge—where by contract a deposit of goods is made a security for a debt, and the right to the property vests in the pledgee so far as is necessary to secure the debt": *per* Willes, J (*Halliday* v *Holgate* (L. R. 3 Ex. p 302)

A pledge or pawn is a bailment of goods by a debtor to his creditor to be kept till the debt is discharged · Wharton

It is created by, and is incomplete without, an actual or constructive delivery of the thing pledged, to or on behalf of the pledgee, and it confers a special or qualified property in the pledge, sufficient to support an action against a person who wrongfully converts it, the general property remaining in the pledgor Fisher, 'Law of Mortgage, para 13' See also *Donald v Suckling* (L R 1 Q B p 591)

The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge' The bailor is in this case called the pawnor The bailee is called the pawnee' Indian Contract Act (IX of 1872), sec 172

Hypothecation is the appropriation of property for the discharge of a debt or engagement, without giving the creditor either an absolute or special property in the subject of the security, *e g*, a charge contained in a settlement, or an order upon a third party to apply moneys in his hands to the discharge of the debt An *hypothecation may be ordinary or maritime, and the former may* be created—(a) by a *charge* or direction in a settlement, will or other instrument, whereby real or personal property is expressly or constructively made liable, or specially appropriated to the discharge of a portion, legacy or other burthen, or declared to be subject to a lien for securing the same (2) by the appropriation to the discharge of a debt of specific choses in action or chattels, which either are, at the time of appropriation, or may or will thereafter be in the hands of a third person This form of hypothecation is commonly known as an *equitable assignment*, and is effected either by an agreement or by an order upon the holder of the property : Fisher, 'Law of Mortgage,' paras 4, 215

Hypothecation is the act of pledging a thing without parting with the possession Wharton

The distinction observed in the Roman Law between a pledge or pawn (*pignus*), where possession was given of the goods, and a hypothecation (*hypotheca*), where it was not given has now, however, been lost sight of. "There are few cases, if any, in our law, where an hypothecation, in the strict sense of the Roman Law, exists ; that is a pledge without possession by the pledgee, and these are rather cases of liens or privileges than strict hypothecations. There are also cases where mortgages of chattels are held valid, without any actual possession by the mortgagee but they stand upon very peculiar grounds, and may be deemed exceptions to the general rule. They either stand upon the positive provisions of some statute, or they are the result of some contract, stipulating for the possession of the mortgagor, under circumstances in which such possession is deemed compatible with good faith, and does not hold out false colours to creditors or purchasers In these cases the Courts have

recognised the general distinction that a mortgage may be without possession, but that a pledge cannot be without possession " Story, 'Bailments,' sec 288

A lien, answering to the *tacita hypotheca* of the Civil Law, is a right conferred by law, and not by contract, upon one man to retain possession of or to have a charge upon property real or personal belonging to another, until certain demands are satisfied Wharton Fisher, 'Law of Mortgage, (6th Ed) para 5

The 'exemption has been transferred from its original place under Art. 40

"*Money advanced or to be advanced or an existing or future debt*"—These words have been introduced in place of a loan made,' in consequence of the view expressed in *Queen Empress v Debendra Krishna Mitter* (27 Cal 587), that the article did not relate to assignments by way of mortgage to secure a pre-existing debt, but only to instruments which are contemporaneous with the advance and the deposit The effect of the amendment is to place all such instruments on the same footing, whether their execution is or is not simultaneous with the advances secured by them

An agreement to secure the repayment of a loan made on the mortgage of a crop, which was made chargeable under this provision (by Not No 1280, 5*th June*, 1885) is provided for under Art 41

See also sec 2 (17) *n*, Art 16, Art 32, and Art 40, *n*

For the kind of stamp to be used, see *Appx A* For calculation of duty, see *Appx E*

7. APPOINTMENT IN EXECUTION OF A POWER, whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will	Fifteen rupees

Note.

Cf Act I, 1879, Art 6 sch 1 (*Appx D*)

Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property Indian Succession Act (X of 1865), sec 56

"*Property.*"—See sec. 2 (10), *n*

A settlement made under a power of appointment conferred by a 'will' is chargeable under Art. 7, and not as a settlement (Art 58): *In re Abdulla Haji* (35 Bom 444)

For the kind of stamp to be used, see *Appx A*

8 APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
(a) where the amount does not exceed Rs. 1,000,	The same duty as a Bond (No 15) for such amount
(b) in any other case ..	Five rupees

Exemptions

(*a*) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law

(*b*) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent

Note.

Cf Act I, 1879, Art 7, sch i, and Arts 3, 4, sch ii Cf also 54 & 55 Vic, c 39, s 24 and 33 & 34 Vic., c 97, s 38

An 'appraiser' is a person who values or appraises any estate or property real or personal, or any interest, in possession or otherwise in any estate or property, or any goods, merchandise or effects, for or in expectation of any hire, gain, fee or reward (46 Geo III, c 43, s 4) This has been interpreted to mean a person who bears the character or follows the calling or occupation of an appraiser: *per* Lord Ellenbrough, C J, *Atkinson* v *Fell* (5 M. & S 240).

An 'appraisement' or 'valuation' to be chargeable under Art. 8 must be made as between parties It is distinguishable from an 'award' (Art 12), though the duty is the same on both.

Where an instrument "appointed persons to settle an account of what was due between the parties for the value of different articles," it was held to be an 'appraisement' *Leeds* v. *Burrows* (12 East, 1).

Ex. (a.)—This is in accordance with the English Stamp Act, 1891, and the decision in *Atkinson* v *Fell*

Ex. (b).—See Bengal Tenancy Act (VIII of 1885) ss. 69-71.

For the kind of stamp to be used, see *Appx A*

9. APPRENTICESHIP-DEED, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, not being ARTICLES OF CLERKSHIP (No 11)	Five rupees.

See also MEMORANDUM OF ASSOCIATION OF A COMPANY (No 39).

Note.

Cf Act I 1879 Art 5 sch I (*App. D*) Cf also 25 & 26 Vic. c 89 s 16

For a description of this document see the Indian Companies Act (VII of 1913) pt II

Where a Company, limited by shares and already possessing articles of association passed a special resolution, in virtue of which a document was drawn up entitled 'Articles of Association' in supersession of the articles theretofore in force, it was held that the Indian Companies Act did not contemplate any such thing as new articles of association, and that the document was nothing more than the record of a special resolution, and as such did not require to be stamped *In the matter of the New Egerton Woollen Mills* (22 All 131)

The exemption was first introduced by Not No 5799 *S R*, *1st Nov* 1895 Sec 26 of Act VII of 1913 relates to associations "formed for the purpose of promoting art, science, charity, or any other useful object and with the intention of applying its profits, if any, in promoting its objects only

For the kind of stamp to be used see *App. A*

11 ARTICLES OF CLERKSHIP	
or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court	Two hundred and fifty rupees

Note.

Cf Act I, 1879, Art 9, sch I (*App. D*) Cf also 54 & 55 Vic, c. 39, ss 26—28, 33 & 34 Vic, c 97, s 42—44, 36 & 37 Vic., c. 63, and c. 66, s 87, and 40 & 41 Vic, c 57, s 78

See also Art. 9 and Art 30, *n*

For the kind of stamp to be used, see *App. A*

ASSIGNMENT.

See CONVEYANCE (No 23), (TRANSFER No 62) and TRANSFER OF LEASE (No. 63), as the case may be.

ATTORNEY.

See ENTRVASAN ATTORNEY (No 30) and POWER-OF-ATTORNEY (No. 48)

AUTHORITY TO ADOPT.

See ADOPTION-DEED (No. 3).

12 AWARD, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs 1,000	The same duty as a Bond (No 15) for such amount
(b) in any other case	Five rupees

Exemption

Award under the Bombay District Municipal Act, 1873 [1901] section 81, or the Bombay Hereditary Offices Act, 1874, section 18

Note.

Cf Act I, 1879, Art 10, sch i and Art 6, sch ii (*Appx. D*). Cf also 54 & 55 Vic, c 39

This provision relates only to private awards Awards directing partitions are specially provided for as partitions

The appointment of an umpire in writing by arbitrators would not be chargeable under this article *Routledge v. Thornton* (4 Taunt 704)

Letters written by parties authorizing arbitrators to arbitrate between them do not require to be stamped : *Gangaram Kushaba v. Narayan Babaji* (19 Bom 32)

For the kind of stamp to be used, see *Appx A*

13. BILL OF EXCHANGE— [as defined by s. 2 (2) and (3)] not being a BOND, BANK NOTE or CURRENCY-NOTE—	
(a) where payable on demand , ...	One anna

BILL OF EXCHANGE.—*contd.*

[(*b*) where payable otherwise than *on demand, but not more* than one year after date or sight—

			If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
			Rs a p	Rs. a. p	Rs. a. p
		Rs			
If the amount of the bill or note does not exceed		200	0 3 0	0 2 0	0 1 0
if it exceeds Rs 200 and does not exceed		400	0 6 0	0 3 0	0 2 0
Ditto	400 ditto	600	0 9 0	0 5 0	0 3 0
Ditto	600 ditto	800	0 12 0	0 6 0	0 4 0
Ditto	800 ditto	1,000	0 15 0	0 8 0	0 5 0
Ditto	1,000 ditto	1,200	1 2 0	0 9 0	0 6 0
Ditto	1,200 ditto	1,600	1 8 0	0 12 0	0 8 0
Ditto	1,600 ditto	2,500	2 4 0	1 2 0	0 12 0
Ditto	2,500 ditto	5,000	4 8 0	2 4 0	1 8 0
Ditto	5,000 ditto	7,000	6 12 0	3 6 0	2 4 0
Ditto	7,500 ditto	10,000	9 0 0	4 8 0	3 0 0
Ditto	10,000 ditto	15,000	13 8 0	6 12 0	4 8 0
Ditto	15,000 ditto	20,000	18 0 0	9 0 0	6 0 0
Ditto	20,000 ditto	25,000	22 8 0	11 4 0	7 8 0
Ditto	25,000 ditto	30,000	27 0 0	13 8 0	9 0 0
and for every additional Rs 10,000 or part thereof in excess of Rs 30,000			9 0 0	4 8 0	3 0 0]

(*c*) where payable at more than one year after date or sight. — The same duty as a Bond (No 15) for the same amount.

Note.

Cf Act I, 1879, Art 11, sch 1 Cf also 54 & 55 Vic c 39

For a definition of this instrument see sec 2 (2), (3), *ante*

Cl (a)—See sec. 2 (3) There is no longer any exemption in favour of bills payable on demand of the value of Rs. 20 or less Cheques and promissory-notes have been similarly affected

Cl (b)—This clause has been twice amended By Act VI of *1910* a general enhancement of duty was effected from 4th March *1910*. By Act I of 1912 a better adjustment of the duties was made.

The same ratio of increment was applied to Bills below Rs 1,000 in value as prevailed above it, and an intermediate grade, from Rs 800 to Rs 1,000, was introduced

When no time is specified for payment in a 'bill' or 'note' it is payable on demand Negotiable Instruments Act (XXVI of 1881), sec. 19

Cl. (b) —See sec 2 (2) The expression 'after sight' means in a promissory-note, after presentment for sight, and in a bill-of-exchange, after acceptance or noting for non-acceptance, or protest for non-acceptance *Id*, sec 21

For currency-notes, see Indian Paper Currency Act (XX of 1882), sec. 3

For the kinds of stamps to be used, see sec 11 and *Appx A*. For exemptions from duty, see *Appx B* For calculation of duty, see *Appx E*

14. BILL OF LADING
(including a through bill of lading) | Four annas

N B.—If a bill-of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set

Exemptions.

(*a*) Bill-of-lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889 [1908], and are to be delivered at another place within the limits of the same port.

(*b*) Bill-of-lading when executed out of British India and relating to property to be delivered in British India.

Note.

Cf. Act I, 1879, Art. 12, sch. 1; Art 7, sch. 11 Cf also 54 & 55 Vic, c 39, s 40; and 33 & 34 Vic., c. 97, s. 56.

For a description of these instruments see sec. 2 (4), *n*

Cl. (a) —'Port' includes any part of a river or channel in which the Indian Ports Act is in force.

Cl (b) —This was first introduced by Not No 1733, *16th June*, 1882

For the kind of stamp to be used see *Appx. A*. For further exemptions see *Appx B*

15 BOND

[as defined by section 2 (5)] not being a DEBENTURE (No 27) and not being otherwise provided for by this Act, or by the Court-fees Act 1870,—

where the amount or value secured does not exceed Rs 10				Two annas
where it exceeds Rs 10 and does not exceed			50	Four annas
Ditto	50	ditto	100	Eight annas
Ditto	100	ditto	200	One rupee
Ditto	200	ditto	300	One rupee eight annas
Ditto	300	ditto	400	Two rupees
Ditto	400	ditto	500	Two rupees eight annas.
Ditto	500	ditto	600	Three rupees
Ditto	600	ditto	700	Three rupees eight annas
Ditto	700	ditto	800	Four rupees
Ditto	800	ditto	900	Four rupees eight annas
Ditto	900	ditto	1,000	Five rupees
and for every Rs 500 or part thereof in excess of Rs 1,000				Two rupees eight annas.

See ADMINISTRATION BOND (No 2), BOTTOMRY-BOND (No. 16), CUSTOMS BOND (No 26), INDEMNITY-BOND (No. 34), RESPONDENTIA-BOND (No 56), SECURITY BOND (No 57).

Exemptions.

Bond, when executed by—

(*a*) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act,

(*b*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

Note.

Cf. Act I, 1879, Art 13, sch. i, and Art 8 (*b*), (*c*). sch ii Cf also 54 & 55 Vic., c. 39; and 33 & 34 Vic, c. 97.

For a definition of this instrument see sec. 2 (5)

"*The amount or value secured*"—Where a bond stipulated for the delivery of a certain quantity of grain of a stated value on a future date, it was held that the 'amount secured' by the instrument was the value of the grain agreed to be made over to the creditor as fixed by the instrument itself, without regard to its market value at the time the claim became due *Bhairab Chundra v Alek Jan* (13 Cal. 268)

Where a bond was couched in these terms "We keep a loan of the balance Rs 100 and execute this bond to pay twice this amount, including Rs 100 for interst, total Rs 200, in eight years", it was held that the 'amount secured' by the bond was Rs 200 *Sambhu Chandra Bepari v Krishna Charan Bepari* (26 Cal 179)

For the kind of stamp to be used, see *App A* For further exemptions see *App B* For calculation of duty, see *App E*

16 BOTTOMRY-BOND, that is to say any instrument whereby the master of a sea going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage	The same duty as a Bond (No. 15) for the same amount

Note.

Cf Act I, 1879, Art 15, sch 1

There is no such provision as this in the English Stamp Act, 1891, but, on the contrary, the Act expressly exempts "instruments for the sale, transfer, or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part interest, share, or property of or in any ship or vessel" This would cover bottomry-bonds A similar provision has been introduced into this Act and embodied in sec 3 (2) Although this was done with the express object of bringing the Act into conformity with the law in the United Kingdom this article has at the same time been retained. Art 16 must therefore be read with and subject to sec. 3 (2), the effect of which will be to exclude from its purview all ships registered in the manner indicated by that section, but possibly no others

Bottomry is the hypothecation of a ship by the master, with or without its freight, as a security for the payment, in the event only of the safe arrival of the ship at her destination, of a debt contracted for the supply of necessaries for the preservation of the ship and the continuance of the voyage, the debt being lost in case of the non-arrival of the ship Fisher, 'Law of Mortgage' (6th Ed) para 235

Where cargo alone is hypothecated, the instrument is called a Respondentia bond see Art 56

The power to pledge a ship does not extend to more than hypothecation, well known in the Civil law, and distinguishable from a mortgage as well as a pledge or pawn, the former of which transfers

the property, the latter a lien on the chattel, and is void without actual possession, but hypothecation gives only a right to be enforced against the subject of it through the medium of process. *Stainbank* v. *Shepard* (22 L. J. Ex. p. 346). See also Smith, 'Mercantile Law' (11th Ed.) p. 573.

Bills of exchange drawn by the master on the owner, as security for money advanced to the master, though accompanied with a verbal engagement by him that the ship shall be liable, cannot be considered as an instrument of hypothecation. *Ex parte Halkett* (19 Ves., 474). See also Abbott, 'Shipping' (14th Ed.), p. 194.

For the kind of stamp to be used, see *Appx. A*. For calculation of duty, see *Appx. F*.

17. CANCELLATION—

Instrument of (including any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided for	Five rupees

See also RELEASE (No. 55), REVOCATION OF SETTLEMENT (No. 58—B), SURRENDER OF LEASE (No. 61), REVOCATION OF TRUST (No. 64—B).

Note.

"*Any instrument previously executed*".—See sec. 2 (12), (14).
For the kind of stamp to be used, see *Appx. A*.

18. CERTIFICATE OF SALE—

(in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue officer—	
(*a*) where the purchase-money does not exceed Rs. 10; ..	Two annas.
(*b*) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25,	Four annas.
(*c*) in any other case ..	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.

Note.

Cf. Act I, 1879, Art. 16, sch. i; and Act VI, 1894, sec. 5 (*Appx. D*).
When property is sold in execution of a decree by a Civil Court

the rights and interest of the judgment-debtor are transferred to and vested in the auction-purchaser If it be moveable property the transfer is made according to the rules laid down in the Civil Procedure Code, O xxi, R 74-81, if it be immoveable property in accordance with the provisions contained in O xxi, R 82-103 R 94 provides that "when a sale of immoveable property has become absolute [i e, when it has been confirmed by the Court under R 92], the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser Such certificate shall bear date the day on which the sale became absolute

The article applies to sales by Revenue Courts or officers, but not to a sale under Reg VIII of 1819 A certificate issued under sec. 15 would be exempt under sec 3 *ante* (Ben Stamp Manual, 1911, p 123)

"*Each property put up as a separate lot and sold*"—These words indicate that each property separately put up for sale should be regarded as the subject for duty

The stamp-duty payable on a certificate of sale is governed not by sec 24, but by Art 18 The amount of the purchase-money is the measure of the consideration on which duty is payable see *Ref.* (5 Mad 18), *Ref* (7 Mad 421), *Ref* (10 Cal 92), *Jwala Prasad v. Ram Narain* (15 All 107) It was held otherwise in *Sha Nagindas Jeychand v Halalkore Nathwa Gheesla* (5 Bom 470); *In re Vishnu Keshav Sathe* (10 Bom 58), and *Meer Kaisur v Ebrahim Khan* (15 Bom 532) But the introduction of the word *only* in cl (c) has settled the matter And see also the first proviso to sec 24, *ante*.

Section 55 (5) (*a*) of the Transfer of Property Act (IV of 1882) would have no bearing here, for sec 2 of the Act expressly provides that the Act (save as provided in sec. 57 and chap iv) is not intended to affect "*any transfer by operation of law or any transfer in execution of a decree or order of a Court*" *Ref* (10 Cal p 96)

Mortgages noted in the proclamation of sale as claims upon the property sold should not necessarily be entered in the certificate of sale, or be computed as part of the purchase-money, unless they have been admitted by the parties, or established by decree, or unless they have been declared under sec. 282 [O xxi, R 62] C P C, to be charges on the property and the Court has seen fit to sell it subject to them *Shantippa Chidambaraya v Subrao Ramchandra* (18 Bom 175)

The Courts shall not forward copies of the certificate to the Registry Office until the purchaser has tendered the necessary stamp, and the original certificate has been drawn up On each copy the amount of stamp duty paid on the original certificate must be noted (*Cal H. C C O* No 12, 21st *Feb*, 1880) The copies themselves would be exempt under Art 24 (*a*)

the property, the latter a lien on the chattel, and is void without actual possession, but hypothecation gives only a right to be enforced against the subject of it through the medium of process. *Staunbank* v. *Shepard* (22 L J Ex p 346) See also Smith, 'Mercantile Law' (11th Ed) p 573.

Bills-of-exchange drawn by the master on the owner, as security for money advanced to the master, though accompanied with a verbal engagement by him that the ship shall be liable, cannot be considered as an instrument of hypothecation *Ex parte Halkett* (19 Ves, 474). See also Abbott, 'Shipping' (14th Ed), p 194

For the kind of stamp to be used, see *Appx A*. For calculation of duty, see *Appx E*

17. CANCELLATION—

Instrument of (including any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided for	Five rupees

See also RELEASE (No. 55), REVOCATION OF SETTLEMENT (No. 58—B), SURRENDER OF LEASE (No. 61), REVOCATION OF TRUST (No 64—B).

Note.

'*Any instrument previously executed*"—See sec. 2 (12). (14

For the kind of stamp to be used, see *Appx A*.

18 CERTIFICATE OF SALE—

(in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue officer—	
(*a*) where the purchase-money does not exceed Rs 10, ..	Two annas.
(*b*) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25;	Four annas
(*c*) in any other case .. .	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase money only

Note.

Cf. Act I, 1879, Art. 16, sch. 1; and Act VI, 1894, sec. 5 (*Appx D*).

When property is sold in execution of a decree by a Civil Court

the rights and interest of the judgment-debtor are transferred to and vested in the auction-purchaser. If it be moveable property the transfer is made according to the rules laid down in the Civil Procedure Code, O xxi, R 74-81; if it be immoveable property in accordance with the provisions contained in O xxi, R 82-103. R. 94 provides that "when a sale of immoveable property has become absolute [i e, when it has been confirmed by the Court under R 92], the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute."

The article applies to sales by Revenue Courts or officers, but not to a sale under Reg VIII of 1819. A certificate issued under sec 15 would be exempt under sec 3, *ante* (Ben Stamp Manual, 1911, p 123).

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Section 55 (5) (a) of the Transfer of Property Act (IV of 1882) would have no bearing here, for sec 2 of the Act expressly provides that the Act (save as provided in sec 57 and chap iv) is not intended to affect "*any transfer by operation of law or any transfer in execution of a decree or order of a Court*": *Ref* (10 Cal. p 96).

Mortgages noted in the proclamation of sale as claims upon the property sold should not necessarily be entered in the certificate of sale, or be computed as part of the purchase-money, unless they have been admitted by the parties, or established by decree, or unless they have been declared under sec 282 [O xxi, R. 62] C. P. C., to be charges on the property and the Court has seen fit to sell it subject to them. *Shantappa Chidambaraya v. Subrao Ramchandra* (18 Bom 175).

The Courts shall not forward copies of the certificate to the Registry Office until the purchaser has tendered the necessary stamp, and the original certificate has been drawn up. On each copy the amount of stamp-duty paid on the original certificate must be noted: (*Cal H. C. C O* No 12, 21st *Feb*, 1880). The copies themselves would be exempt under Art 24 (a).

For the kind of stamp to be used see *Appx. A.* For calculation of duty see *Appx. E*

Description of Instrument	Proper Stamp-duty
19. CERTIFICATE OF OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body.	One anna

See also LETTER OF ALLOTMENT OF SHARES (No 36)

Note.

Cf. Act I, 1879, Art 17, sch 1 Cf also 54 & 55 Vic, c. 39, s 108, and 38 & 39 Vic, c 83

"A certificate under the common seal of the company, specifying any stock held by any member of a company shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified" Indian Companies Act (VII of 1913) sec. 29

"*Stock*"—See sec 2 (1), *n*

For the kind of stamp to be used, see sec 11 and *Appx A*

Description of Instrument	Proper Stamp-duty
20 CHARTER-PARTY that is to say any instrument (except an agreement for the hire of a tug steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer whether it includes a penalty clause or not	One rupee

Note.

21 CHEQUE—	
[as defined by section 2 (7)]	One anna.

Note.

Cf. Act I 1879, Art 19, sch 1

For a definition of this instrument see sec 2 (7), *ante*

The words 'for an amount exceeding twenty rupees' have been omitted, the effect of which is to make all cheques chargeable alike Bills of exchange and promissory notes have been similarly affected

For the kind of stamp to be used see sec 11 and *Appx A*. For exemptions from duty see *Appx B*

22. COMPOSITION-DEED,	
that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors	Ten rupees

Note.

Cf Act I, 1879, Art 20, sch 1

An instrument which substantially amounts to a transfer by a debtor of his property for the benefit of his creditors is a composition-deed and not a conveyance *Subbaraya v. Vythalinga* (16 Mad. p 89)

An inspectorship-deed is covered by this provision.

"*Letters of license.*"—See Art 38

For the kind of stamp to be used see *Appx. A.*

23 CONVEYANCE	
[as defined by section 2 (10), not being a TRANSFER charged or exempted under No. 62,—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs 50	Eight annas.

CONVEYANCE.—*contd*

where it exceeds Rs. 50	but does not exceed	Rs 100 ...		One rupee
Ditto	100	ditto	200 ...	Two rupees
Ditto	200	ditto	300 .	Three rupees
Ditto	300	ditto	400 .	Four rupees
Ditto	400	ditto	500 ..	Five rupees
Ditto	500	ditto	600 .	Six rupees
Ditto	600	ditto	700	Seven rupees
Ditto	700	ditto	800	Eight rupees
Ditto	800	ditto	900 .	Nine rupees
Ditto	900	ditto	1,000	Ten rupees

and for every Rs 500 or part thereof in excess of Rs 1,000, Five rupees]

Exemption.

(Assignment of copyright by entry made under the Indian Copyright Act, 1847, section 5)

Note.

Cf Act I, 1879, Art 21, sch 1, and Art 5, sch II (*Appx. D*) Cf also 54 & 55 Vic, c 39, and 33 & 34 Vic, c 97

For a description of this instrument see sec 2 (10), *ante*

"*As set forth therein*"—The duty payable on a conveyance is to be calculated on the consideration set forth therein, and not on the intrinsic value of the property conveyed *Ref* (20 Mad. 27 But the consideration must be truly set forth see sec 27

If the property conveyed be situated within the town of Calcutta the duty is enhanced by 2 per cent (Ben Act V of 1911, s 82)

An instrument which is in terms a conveyance of property at an agreed value, is a sale of such property at that price The circumstance that it forms part of a larger transaction will not affect the character of the instrument *Ref* (20 Bom 432)

Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share of a lease only forms part of the subject matter of the sale, as being a part of the partnership assets, the transaction must be regarded as the sale of a share in a partnership and chargeable accordingly, and not as the transfer of a lease *In re Menglas Tea Estate* (12 Cal 583), *In re Mol urgunge Tea Estate* (*Id.* p 587)

And so also when by one and the same deed there is a conveyance of freehold lands and good will and a transfer of interest secured by leases *In the matter of a Reference* (23 Cal 283)

An assignment of a debt is a transfer of property as defined by sec. 2 (10), and is chargeable under Art. 23 *Nandlal v Gia* (27 Bom 150)

Where property is conveyed subject to a debt, charge, or incumbrance the consideration must be deemed to include it see sec 24

A conveyance must be taken to include the usual convenants for title, and the stamp for the conveyance covers the whole. Such covenants cannot be regarded as constituting separately an indemnity-bond on which duty could be charged *Ref* (1 Mad 133).

"*Not being a transfer under No* 62 '—When a transfer by a trustee to a *cestui que trust* was drawn in the form of a conveyance for Rs 10, it was held that it did not require to be so done, but having been done, it required to be stamped as a conveyance *Ref* (7 Mad 350) Such a deed would now, it is presumed, be chargeable under Art 62 (*e*)

"*Assignment of Copyright* —Since the repeal of Act XX of 1847 by Act III of 1914 the mode of assignment referred to no longer exists, and the exemption must therefore be regarded as obsolete The Indian Copyright Act, 1914, expressly provides (sch 1, s 5) that "no assignment or grant shall be valid unless it is in writing signed by the *owner of the right in respect of which the assignment* or grant is made, or by his duly authorised agent '

See sec 2 (10), *n* and Arts 62, *c*, *e*

For the kind of stamp to be used see *Appx A* For further exemptions from duty see *Appx B* For calculation of duty see *Appx E*

CO-PARTNERSHIP-DEED

See PARTNERSHIP (No. 46)

24. COPY OR EXTRACT—

certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee	Eight annas
(ii) in any other case ...	One rupee

Exemptions.

(*a*) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

[(b) Copy of, or extract from, any register relating to births baptisms, namings, dedications, marriages, 'divorces', deaths or burials]

Note.

Cf Act I, 1879, Art 22, sch i, and Art 9, sch. ii, (*Appx. D*).

Cf also 54 & 55 Vic, c 39, ss 63, 64, and 33 & 34 Vic., c. 97, ss 79, 80

This provision does not govern copies contemplated by sec. 62 [O vii, R 17], Civil Procedure Code, *Krishnaji Sadashiv Ranade* v *Dulaba* (15 Bom 667)

Nor does it apply to such copies as are referred to in ss. 141, 141A, and 142A [O xiii, Rs 4, 5, 7], Civil Procedure Code, for they are not certified at the time they are furnished by or by the order of any public officer, and the subsequent certificate by the Court or its officer under sec 62 would not bring them within it. *Harichand* v. *Jivna Subhana* (11 Bom 526), *Kastur* v. *Fatima* (26 Bom 525), *Nandubai* v. *Ganu* (27 Bom p 154)

It might be otherwise, however, with a copy falling under sec 144 [O xiii, R 9] There is apparently a distinction between a copy substituted for the original under sec 141A [R 5]—which when furnished is not certified—and the copy substituted for the original under sec 144 [R 9], which when delivered must be certified: *Kastur* v *Fatima* (26 Bom p 525) *But this again would, it is presumed, be* chargeable under the Court Fees Act (VII of 1870), Art 8

But a copy of an order passed by a Municipal Board and certified as a true copy by the Secretary comes within it, and the Secretary is a public officer for the purposes indicated therein. *Ref* (19 All 293)

"*Any public officer*"—See Civil Procedure Code (Act V of 1908), sec 2 (17), and the Indian Penal Code (Act XLV of 1860), sec. 21

As to certified copies of public documents, see Indian Evidence Act, ss. 76-78; as to registered documents, see Indian Registration Act (III of 1877), sec. 57.

Cl. (a).—This reproduces Art 9, sch. ii of the previous Act For examples of such copies, see sec. 38, *Art* 18, *u ante*, and *the Indian* Registration Act, ss. 56, 61, 65, 71.

Cl. (b).**—***This was amended by Act V of 1906.* The word 'divorces' was added to remove a possible doubt, by the Repealing and Amending Act, 1914.

Act VI of 1886 provides for the voluntary registration of births and deaths among certain classes of persons, and of the marriages registered under Act III of 1872, or the Indian Christian Marriage [illegible] registered under the Parsi

25 COUNTERPART OR DUPLICATE	
of any instrument chargeable with duty and in respect of which the proper duty has been paid,—	
(*a*) if the duty with which the original instrument is chargeable does not exceed one rupee	The same duty as is payable on the original
(*b*) in any other case	One rupee

Exemption

Counterpart of any lease granted to a cultivator when such lease is exempted from duty

Note

Cf Act I, 1879, Art 23, sch i, and Art 13, (*c*), sch ii (*Appx. D*) Cf also 54 & 55 Vic, c 39, s, 72 and 33 & 34 Vic, c 97, s 93

"*Any instrument chargeable with duty.*"—See sec 2 (6, (14)

This article must be read with ss 6 and 16, *ante*

A duplicate receipt would be liable to stamp-duty (Not No 2153, *20th July*, 1863) But the same purpose may be served equally well by copies of the original, which require no stamp (B C O No 17 T L, *19th Aug*, 1884)

"*When such lease is exempted*"—See Art 35, Ex (*a*) A counterpart of a lease of salt pans is not exempt *Manjunath* v. *Mangesh* (18 Bom 546)

"*To a cultivator.*"—See Art 35, *n*

For the kind of stamp to be used, see *Appx A.* For further exemptions from duty, see *Appx. B.*

[(b) Copy of, or extract from, any register relating to births baptisms, namings, dedications, marriages, 'divorces' deaths or burials]

Note.

Cf. Act I, 1879, Art 22, sch. i, and Art 9, sch. ii, *(Appx. D)*.

Cf. also 54 & 55 Vic, c 39, ss 63, 64, and 33 & 34 Vic, c. 97, ss 79, 80

This provision does not govern copies contemplated by sec. 62 [O vii, R 17], Civil Procedure Code, *Krishnaji Sadashiv Ranade* v *Dulaba* (15 Bom 687)

Nor does it apply to such copies as are referred to in ss. 141, 141A, and 142A [O xiii, Rs 4, 5, 7], Civil Procedure Code, for they are not certified at the time they are furnished by or by the order of any public officer, and the subsequent certificate by the Court or its officer under sec 62 would not bring them within it, *Harichand* v. *Jivna Sakharam* (11 Bom 526), *Kastur* v. *Fakira* (26 Bom 522), *Nandubai* v *Gan* (27 Bom p 154)

It might be otherwise, however, with a copy falling under sec 144 [O xiii, R 9] There is apparently a distinction between a copy substituted for the original under sec 141A [R 5]—which when furnished *is not certified—and the copy substituted for the original* under sec 144 [R 9], which when delivered must be certified *Kastur* v *Fakira* (26 Bom p 525) But this again would, it is presumed, be chargeable under the Court Fees Act (VII of 1870), Art 8

But a copy of an order passed by a Municipal Board and certified as a true copy by the Secretary comes within it, and the Secretary is a public officer for the purposes indicated therein *Ref* (19 All 293).

"*Any public officer*"—See Civil Procedure Code (Act V of 1908), sec 2 (17), and the Indian Penal Code (Act XLV of 1860), sec 21

As to certified copies of public documents, see Indian Evidence Act, ss 76-78; as to registered documents, see Indian Registration Act (III of 1877), sec 57

Cl. (a).—This reproduces Art 9, sch ii of the previous Act. For examples *of such copies, see sec. 38, Art 18, ante*, and the Indian Registration Act, ss 56, 61, 65, 71.

Cl. (b).—This was amended by Act V of 1906 The word 'divorces' was added to remove a possible doubt, by the Repealing and Amending Act, 1914

Act VI of 1886 provides for the voluntary registration of births and deaths among certain classes of persons, and of the marriages registered under Act III of 1872, or the Indian Christian Marriage Act, 1872, and of certain marriages registered under the Parsi

26. CUSTOMS-BOND—

(*a*) where the amount does not exceed Rs. 1,000,	The same duty as a Bond (No. 15) for such amount.
(*b*) in any other case	Five rupees.

Note.

Cf Act I, 1879, Art. 24, sch. i.

For bonds of this description see the Sea Customs Act (VIII of 1878) and the Bonded Warehouses Act (XXI of 1887)

For the kind of stamp to be used see *Appx A*

27. [DEBENTURE—

(whether a mortgage debenture or not) being a marketable security transferable—	
(*a*) by endorsement or by a separate instrument of transfer,	The same duty as Bond (No. 15) for the same amount.
(*b*) by delivery ...	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

Explanation —The term 'Debenture' includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty]

Exemption.

A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.

See also BOND (*No. 15*); *and sections 8 and 55*.

Note.

Cf. 54 & 55 Vic., c. 39.

Previously debentures were chargeable as bonds. Art 27 [illegible]

28. DELIVERY-ORDER IN RESPECT OF GOODS—

that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	One anna

Note.

Cf. Act I, 1879, Art 26, sch I See also 54 & 55 Vic, c. 39, s 69, and 33 & 34 Vic, c 97, s 87

This is an order addressed by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, &c Sweet

It is doubtful if a mere order in writing by a merchant to his warehouseman to deliver goods to a purchaser would come within it An order by a master to a servant in writing to pay money to another has been held not to be 'an order for the payment of money' which is liable to stamp duty, as it was not "in the nature of a mercantile instrument" see sec 2 (3), n

A delivery order differs from a warrant for goods (Art 65) in being signed by or on behalf of the owner of the goods, as distinguished from the person in whose custody they are

For the kind of stamp to be used see sec. 11 and *Appx. A.*

DEPOSIT OF TITLE-DEEDS—

See AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE (No 6)

DISSOLUTION OF PARTNERSHIP—

See PARTNERSHIP (No 46)

29. DIVORCE—

Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee

Note.

The instrument here contemplated is presumably one which might be executed in pursuance of a divorce effected under the Mahomedan Law Such instruments were first made chargeable with duty by notification (No 2201, *2nd April*, 1874) but this was subsequently cancelled (No 188, *15th Jan* 1875) See *Appx D*

"There are thirteen kinds of *firkut*, or separation of married parties, of which seven require a judicial decree, and six do not" Baillie, p 203 For the purposes of Anglo Indian practice these thirteen kinds may be conveniently reduced to three, the *talak* the *khula* and the judicial divorce A divorce proceeding simply from the husband, or from the wife or some third person in pursuance of authority given by the husband, is called *talak* A divorce by mutual agreement is called generally *khula*, sometimes *mubarat* A *talak* divorce may be effected by writing as well as by word of mouth Such writing must ordinarily be addressed to and reach the wife Wilson 'Anglo Muhammadan Law' (4th Ed) pp. 143-164

"Writing is not necessary to the legal validity of a divorce under the Mahomedan Law, but where a divorce takes place between persons of rank and property, and where valuable rights depend upon the marriage, and are affected by the divorce, one would certainly expect that the parties, for their own security, would have some document which should afford satisfactory evidence of what they had done" *Khajah Goolar Ali Khan* v *Khajah Ahmed Khan* (20 W R 214)

A *khula* divorce is accomplished at once by means of appropriate words spoken or written by the two parties or their respective agents, the wife offering, and the husband accepting, compensation out of her property for the release of his marital rights Baillie, 'Moohumudan' (2nd Ed) pp 107-173

The article would probably also include the *chor chitti* in vogue among certain castes in Western India: Mayne's 'Hindu Law,' (7th Ed) p 114; and the *fargh khat* used by the Rajput Gujeratis in Khandesh: *Empress* v. *Una* (6 Bom 126).

For the kind of stamp to be used see *Appx. A*

DOWER—

Instrument of

See SETTLEMENT (No 58)

DUPLICATE—

See COUNTERPART (No 25)

28. DELIVERY-ORDER IN RESPECT OF GOODS—

that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	One anna

Note.

Cf Act I, 1879, Art 26, sch I See also 54 & 55 Vic, c. 39, s 69, and 33 & 34 Vic, c 97, s 87

This is an order addressed by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, &c Sweet.

It is doubtful if a mere order in writing by a merchant to his warehouseman to deliver goods to a purchaser would come within it An order by a master to a servant in writing to pay money to another has been held not to be "an order for the payment of money" which is liable to stamp duty, as it was not "in the nature of a mercantile instrument" see sec 2 (3), n

A delivery order differs from a warrant for goods (Art 65) in being signed by or on behalf of the owner of the goods, as distinguished from the person in whose custody they are

For the kind of stamp to be used see sec. 11 and *Appx A.*

DEPOSIT OF TITLE-DEEDS—

See AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE (No 6)

DISSOLUTION OF PARTNERSHIP—

See PARTNERSHIP (No 46)

29. DIVORCE—

Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.	One rupee

Note.

Cf Act I, 1879, Art 34, sch I (*Appx D*)

The instrument here contemplated is presumably one which might be executed in pursuance of a divorce effected under the Mahomedan Law Such instruments were first made chargeable with duty by notification (No 2201, *2nd April*, 1874) but this was subsequently cancelled (No 188, *15th Jan* 1875 See *Appx D*

"There are thirteen kinds of *firkut*, or separation of married parties, of which seven require a judicial decree and six do not" Baillie, p 203 For the purposes of Anglo Indian practice these thirteen kinds may be conveniently reduced to three, the *talak* the *khula* and the judicial divorce A divorce proceeding simply from the husband, or from the wife or some third person in pursuance of authority given by the husband is called *talak* A divorce by mutual agreement is called generally *khula*, sometimes *mubarat* A *talak* divorce may be effected by writing as well as by word of mouth Such writing must ordinarily be addressed to and reach the wife Wilson 'Anglo Muhammadan Law' (4th Ed) pp 143-164

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A *khula* divorce is accomplished at once by means of appropriate words spoken or written by the two parties or their respective agents, the wife offering, and the husband accepting, compensation out of her property for the release of his marital rights. Baillie, 'Moohumudan' (2nd Ed) pp 107-173

The article would probably also include the *chor chitthee* in vogue among certain castes in Western India. Mayne's 'Hindu Law,' (7th Ed) p 114; and the *farigh Uttat* used by the Rajput Gujeratis in Khandesh *Empress* v. *Umi* (6 Bom 126)

For the kind of stamp to be used see *Appx. A*

DOWER—

Instrument of

See SETTLEMENT (No 58)

DUPLICATE—

See COUNTERPART (No 25)

30. ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT—

in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners' Act, 1884—	
(*a*) in the case of an Advocate or Vakil	*Five hundred* rupees.
(*b*) in the case of an Attorney ...	Two hundred and *fifty rupees*

Exemption.

Entry of an advocate, vakil or attorney on the roll of any High Court *when he has previously been enrolled* in a High Court

Note.

Cf Act I, *1879, Art 27, sch* I, *and Art* II (*a*), *sch* II (*Appx. D*)

"*On the roll of any High Court*"—This article is not applicable to pleaders who are not so enrolled Pleaders, mukhtars, and Revenue agents come under the Legal Practitioners' Act (XVIII of 1879, sch II)

The exemption extends in favour of any one once enrolled as a vakil of a High Court seeking to be enrolled as an advocate of the same High Court It also probably applies to the case of an attorney enrolled as such—who pays Rs 250 on his articles of clerkship and Rs. 250 on enrolment—on seeking enrolment as an advocate in the same High Court *In re Parthasaradi* (8 Mad 14) *In re Baxter* (30 Cal 645)

The terms of this provision do not, however, appear to restrict its benefits to cases of entry in the same High Court, but, on the contrary, favour a different conclusion

The stamp duty chargeable on entry as a vakil on the rolls of any High Court under the letters patent constituting such Court of any person who was bound as a clerk to a vakil of such Court, under articles executed before 1st April, 1879, has been reduced, with retrospective effect to Rs. 275 (No 1479, 27*th March*, 1880)

For the kind of stamp to be used see sec. 11 (*c*) and *Appx A*

31 EXCHANGE OF PROPERTY— *Instrument of*	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.

Note.

Cf Act I, 1879, Art 35, sch. I (*Appx. D*) Cf. also 54 & 55 Vic., c. 39, s. 73; and 33 & 34 Vic., c. 97, s. 94

"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an 'exchange' A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale" Transfer of Property Act (IV of 1882), sec 118

This would seem to signify by means of a 'Conveyance' There is no reason, however, why moveable property should not be exchanged by delivery, just as it can be conveyed by delivery, without recourse to a document at all See sec 2 (10), *n*, and Art 33, *n*

"*As set forth* in such instrument"—See sec 27

For the kind of stamp to be used see *Appx A* For exemptions from duty see *Appx B* For calculation of duty see *Appx E*

EXTRACT—

See Copy (No 24).

32. FURTHER CHARGE—

Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(*a*) when the original mortgage is one of the description referred to in clause (*a*) of Article No. 40 (that is, with possession);	The same duty as a Conveyance (No 23) for a consideration equal to the amount of the further charge secured by such instrument
(*b*) when such mortgage is one of the description referred to in clause (*b*) of Article No 40 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given, or agreed to be given under such instrument;	The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge

30. ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT—

in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners' Act, 1884—	
(*a*) in the case of an Advocate or Vakil	Five hundred rupees
(*b*) in the case of an Attorney ...	Two hundred and fifty rupees.

Exemption.

Entry of an advocate, vakil or attorney on the roll of any High Court when he has previously been enrolled in a High Court

Note.

Cf Act I, 1879, Art 27, sch i, and Art 11 (*a*), sch ii (*Appx. D*).

"*On the roll of any High Court*"—This article is not applicable to pleaders who are not so enrolled Pleaders, mukhtars, and Revenue agents come under the Legal Practitioners' Act (XVIII of 1879, sch ii)

The exemption extends in favour of any one once enrolled as a vakil of a High Court seeking to be enrolled as an advocate of the same High Court It also probably applies to the case of an attorney enrolled as such who pays Rs 250 on his articles of clerkship and Rs 250 on enrolment – on seeking enrolment as an advocate in the same High Court *In re Parthasarathi* (8 Mad 14) *In re Baxter* (36 Cal 645)

The terms of this provision do not, however, appear to restrict its benefits to cases of entry in the same High Court, but, on the contrary, favour a different conclusion

The stamp duty chargeable on entry as a vakil on the rolls of any High Court under the letters patent constituting such Court of any person who was bound as a clerk to a vakil of such Court, under articles executed before 1st April, 1879, has been reduced, with retrospective effect to Rs 275 (No 1479, *27th March*, 1880)

For the kind of stamp to be used see sec. 11 (*c*) and *Appx A*

31 EXCHANGE OF PROPERTY—

Instrument of	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument

Note.

Cf. Act I, 1879, Art 35, sch. i (*Appx D*) Cf also 54 & 55 Vic, c 39, s. 73; and 33 & 34 Vic., c. 97, s. 94

"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an 'exchange.' A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale" Transfer of Property Act (IV of 1882), sec 118

This would seem to signify by means of a 'Conveyance' There is no reason, however, why moveable property should not be exchanged by delivery, just as it can be conveyed by delivery, without recourse to a document at all See sec 2 (10), *n*, and Art. 33, *n*

"*As set forth* in such instrument'—See sec 27

For the kind of stamp to be used see *Appx A* For exemptions from duty see *Appx B* For calculation of duty see *Appx E*

EXTRACT—

See Copy (No 24)

32. FURTHER CHARGE— Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(*a*) when the original mortgage is one of the description referred to in clause (*a*) of Article No. 40 (that is, with possession);	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.
(*b*) when such mortgage is one of the description referred to in clause (*b*) of Article No. 40 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given, or agreed to be given under such instrument;	The same duty as a Conveyance (No 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge

(ii) if possession is not so given.	The same duty as a Bond (No 15) for the amount of the further charge secured by such instrument

Note.

Cf Act I, 1879, Art. 30, sch i (*App D*) Cf also 54 & 55 Vic, c 39, s 87 (3)

Art 32 *imposes a higher duty in cases where possession is* given of the property charged

A 'further charge' is an additional charge given by the original mortgagor (or those standing in his shoes) to the original mortgagee (or those standing in his shoes) on the same property as that contained in the original mortgage Stroud

For an example see *Rushbrook v Hood* (5 C B 131)

This provision must be distinguished from Art 40 (c) That provides for further assurance by the pledge of additional or substituted security, whereas this relates to a further charge upon the same security

It would not apply to the case of a mortgage bond which purported to operate not merely as a further charge under a still subsisting mortgage, but as a new mortgage in which the previous one had merged *In re Meghji* (25 Bom 370)

For the kind of stamp to be used see *App A* For calculation of duty see *App E*

33 GIFT—

Instrument of, not being a SETTLEMENT (No 58) OR WILL OR TRANSFER (No 62)	The same duty as a Conveyance (No 23) *for a consideration* equal to the value of the property as set forth in such instrument

Note.

Cf Act I, 1879, Art 36, sch i (*App D*)

"Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration by one person, called the donor, to another called the donee and accepted by or on behalf of the donee. Such acceptance must be made during the life time of the donor, and while he is still capable of giving. If the donee dies before acceptance, the gift is void. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a

gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery Such delivery may be made in the same way as goods sold may be delivered" Transfer of Property Act (IV of 1882), ss 122, 123.

Art 62 is an alternative provision for transfers without consideration of certain specified classes of property, at a lighter duty. The words "or transfer' have in fact been added in order to allow such transfers to be charged under Art 62,

"*As set forth in such instrument* —See sec 27

If the subject of the gift be immoveable property situated within the town of Calcutta the duty is increased by 2 per cent. (Ben Act V of 1911, s 82)

A 'gift' is distinguishable from a 'will' by reason of its being non-testamentary and from a 'settlement' by reason of its being without consideration see sec 2 (24) In the case of a 'settlement' made in favour of a single person dependent on the settlor [cl (*b*)], the dependence would constitute a consideration.

Where by an instrument a widow made a grant to another of an annuity for religious purposes, and afterwards adopted a son, and the son thereafter endorsed on the document the words "I consent to act according to this *sanad*," it was held that the instrument was chargeable as a 'gift': *In re Bhavambhu* (7 Bom 194)

A document whereby a Hindu widow conferred all her property on a kinsman imposing on him the duty of maintaining her from the profits was also held to be a 'gift' *Ref.* (12 Mad. 89).

To make a valid gift under the Mahomedan law it is requisite that there should be acceptance with seisin or taking possession, and it is essential that the donor should be in possession of what he or she professes to give *Mohunudin v Manchershah* (6 Bom p 655) But see also *Kuwarbhu v Mir Alam Khan* (7 Bom. 170).

For the kind of stamp to be used see *Appx. A*. For calculation of duty see *Appx E*.

HIRING AGREEMENT OR AGREEMENT FOR SERVICE—
See AGREEMENT (No. 5)

34 INDEMNITY-BOND	The same duty as a Security-bond (No. 57) for the same amount.

Note.

Cf. Act I, 1879, Art. 28, sch i

For a description of bonds see sec. 2 (5). A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity': Indian Contract Act (IX of 1872), sec. 124

(ii) if possession is not so given	The same duty as a Bond (No 15) for the amount of the further charge secured by such instrument.

Note.

Cf Act I, 1879, Art 30, sch I (*App* D). Cf also 54 & 55 Vic, c 39, s 87 (3)

Art 32 imposes a higher duty in cases where possession is given of the property charged

A 'further charge' is an additional charge given by the original mortgagor (or those standing in his shoes) to the original mortgagee (or those standing in his shoes) on the same property as that contained in the original mortgage Stroud

For an example see *Rushbrook v Hood* (5 C B 131)

This provision must be distinguished from Art 40 (c) That provides for further assurance by the pledge of additional or substituted security, whereas this relates to a further charge upon the same security

It would not apply to the case of a mortgage bond which purported to operate not merely as a further charge under a still subsisting mortgage, but as a new mortgage in which the previous one had merged *In re Megha* (15 Bom 370)

For the kind of stamp to be used see *App* A For calculation of duty see *App* L

33 GIFT—

Instrument of, not being a SETTLEMENT (No 58) or WILL or TRANSFER (No 62)	The same duty as a Conveyance (No 23) for a consideration equal to the value of the property as set forth in such instrument.

Note.

Cf Act I, 1879, Art 36, sch I (*App* D)

"Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration by one person, called the donor, to another called the donee and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor, and while he is still capable of giving. If the donee dies before acceptance, the gift is void. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a

gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery Such delivery may be made in the same way as goods sold may be delivered" Transfer of Property Act (IV of 1882), ss 122, 123

Art 62 is an alternative provision for transfers without consideration of certain specified classes of property, at a lighter duty. The words "or transfer' have in fact been added in order to allow such transfers to be charged under Art 62,

"*As set forth in such instrument*"—See sec 27

If the subject of the gift be immoveable property situated within the town of Calcutta the duty is increased by 2 per cent (Ben Act V of 1911, s 82)

A 'gift' is distinguishable from a 'will' by reason of its being non-testamentary, and from a 'settlement' by reason of its being without consideration see sec 2 (24) In the case of a 'settlement' made in favour of a single person dependent on the settlor [cl (*b*)], the dependence would constitute a consideration.

Where by an instrument a widow made a grant to another of an annuity for religious purposes, and afterwards adopted a son, and the son thereafter endorsed on the document the words "I consent to act according to this *sanad*," it was held that the instrument was chargeable as a 'gift'. *In re Bhavambai* (7 Bom 194)

A document whereby a Hindu widow conferred all her property on a kinsman imposing on him the duty of maintaining her from the profits was also held to be a 'gift'. *Ref* (12 Mad 89).

To make a valid gift under the Mahomedan law it is requisite that there should be acceptance with seisin or taking possession, and it is essential that the donor should be in possession of what he or she professes to give - *Mohinudin* v *Mancherskah* (6 Bom. p 655). But see also *Kuvarbai* v *Mir Alam Khan* (7 Bom. 170).

For the kind of stamp to be used see *Appx. A*. For calculation of duty see *Appx. E*

HIRING AGREEMENT OR AGREEMENT FOR SERVICE—

See AGREEMENT (No. 5)

34. INDEMNITY-BOND — ..	The same duty as a Security-bond (No. 57) for the same amount.

Note.

Cf. Act I, 1879, Art 28, sch. i

For a description of bonds see sec 2 (5). A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity' Indian Contract Act (IX of 1872), sec. 124

It is presumed that to convert such a contract into a bond there must be superadded an obligation to pay money, otherwise it would be chargeable only as an agreement, as in the case of an indemnity note : see sec. 2 (5), *n*

A letter of guarantee which is chargeable under Art. 5, is also distinguishable "There is a plain distinction between a promise to pay the creditor if the principal debtor makes default in payment, and a promise to keep a person who has entered, or is about to enter, into a contract of liability indemnified against that liability independently of the question whether a third person makes default or not" *per* Davey, L J, *Guild & Co* v *Conrad* (L R [1894] 2 Q B p 896)

For the kind of stamp to be used see *App* A For exemptions from duty see *App* B For calculation of duty see *App*. E

INSPECTORSHIP-DEED—

See COMPOSITION DEED (No. 22)

INSURANCE—

See POLICY OF INSURANCE (No. 47)

35 LEASE—

including an under lease or sub-lease and any agreement to let or sub-let—

(*a*) where by such lease the rent is fixed and no premium is paid or delivered—

(i) where the lease purports to be for a term of less than one year ;	The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not more than three years ;	The same duty as a Bond (No 15) for the amount or value of the average annual rent reserved.
(iii) where the lease purports to be for a term in excess of three years ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved
(iv) where the lease does not purport to be for any definite term ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long

LEASE.—*contd.*

(*a*) where the lease purports to be in perpetuity	The same duty as a Conveyance (No 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease
(*b*) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved	The same duty as a Conveyance (No 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease
(*c*) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved	The same duty as a Conveyance (No 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered

Provided that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas

Exemptions

(*a*) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.

(*b*) Leases of fisheries granted under the Burma Fisheries Act, 1875 [1905] or the Upper Burma Land and Revenue Regulation, 1889

Note.

Cf Act I, 1879, Art 39, sch. I, and Art. 13, sch II (*App. D*) Cf also 54 & 55 Vic, c. 39; and 33 & 34 Vic, c. 97.

For a description of this instrument see sec. 2 (16).

"*An under-lease or sub-lease*"—This is to be distinguished from a transfer of a lease by way of assignment, which is chargeable with a higher duty under Art 63. The distinction will depend on the terms of the instrument. In a sub-lease the lessee does not part with the whole of his interest to his sub-lessee, but retains a reversion. In a transfer of a lease the rights and interest of the lessee, though not necessarily his liabilities, are conveyed absolutely: see Transfer of Property Act (IV of 1882) sec 108 (*j*).

"*Any agreement to let or sub-let*"—This is chargeable as a lease even although a formal deed of lease may be in contemplation *R f* (17 Mad 280) *Boyd* v. *Krieg* (17 Cal 548). But if a formal lease be subsequently drawn up in pursuance of the agreement the duty on such lease is not to exceed 8 annas (see proviso, *supra*).

"*Rent reserved*"—This may be 'money,' a share of crops, service, or any other thing of value to be rendered periodically or on specified occasions to the lessor by the lessee in consideration of the lease: Transfer of Property Act (IV of 1882), sec 105.

"*Premium*"—This is 'the price paid or promised' as consideration for the lease: *Id*.

Cl (a)—This provides for rent only, and no premium. Where by an instrument certain lands were leased for an annual rent of Rs 15, and Rs 45, a sum equal to three years' rent, were stipulated to be paid in advance and the balance of Rs 10 at the end of the term, it was held that the stipulation for payment of Rs 35 was one for the payment of rent in anticipation, and not for the

possession, the executant made over possession of certain lands to his creditor for nine years in liquidation of a debt of Rs 899-12, stipulating for payment of Rs 35 yearly, it was held that it was, in fact, a sale of a term or lease for nine years with a reserved rent of Rs 35 in consideration of Rs 899-12—the amount of the debt and interest that the debt was satisfied, and not secured when possession was given, and that the stamp-duty leviable was that for a lease with a premium *Ref* (7 Mad 203) See also *Ref* (26 Mad p 474), *In re Parasea Collieries, Ld* (37 Cal 629)

The object of the proviso is to prevent a double levy of duty upon what is practically a single transaction

Ex (a) – Lease includes both a 'patta' and a 'kabuliyat' see sec 2 (16) The exemption is in favour of what are known as agricultural leases which are granted (1) without premium, (2) for a term not exceeding one year, and (3) for an annual rent not exceeding Rs 100 It should be read as follows A lease executed in the case of a cultivator without the payment or delivery of any fine or premium is exempt from duty (1) when a definite term is expressed, and such term does not exceed one year, or (2) when the annual average rent reserved does not exceed one hundred rupees (B C O *6th Mar.*, 1887)

This exemption will cover all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed Rs 100: *In re Bhavan Badhar* (6 Bom 691).

But it applies only to the case of lands let for the purpose of cultivation, and not for any other purpose A kabuliyat executed by cultivators for payment of rent in kind for land occupied by dwelling-houses was held to be chargeable with duty *Narayan Ramchandra v Dhondu Raghu* (10 Bom. 173)

"*In the case of a cultivator.*"—By this term only those persons are connoted who actually cultivate the soil themselves, or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock The class of husbandmen or actual agriculturists is meant; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease: *Ref.* (5 All. 360)

A person whose occupation is that of a cultivator and who takes a lease of land for planting cocoanut trees is, in respect of that occupation, a 'cultivator,' and a 'kabulyat' given by him is exempt if the annual rent reserved does not exceed Rs. 100: *Ramchandra Vasudevshet v. Babaji Kusaji* (15 Bom. 73).

For the kind of stamp to be used see *Appx. A* For further exemptions from duty see *Appx B.* For calculation of duty see *Appx E*

For a description of this instrument see sec. 2 (16)

"*An under-lease or sub-lease*"—This is to be distinguished from a transfer of a lease by way of assignment, which is chargeable with a higher duty under Art 63 The distinction will depend on the terms of the instrument In a sub-lease the lessee does not part with the whole of his interest to his sub-lessee, but retains a reversion In a transfer of a lease the rights and interest of the lessee, though not necessarily his liabilities, are conveyed absolutely see Transfer of Property Act (IV of 1882) sec 108 (*j*)

"*Any agreement to let or sub-let*"—This is chargeable as a lease even although a formal deed of lease may be in contemplation *Ref* (17 Mad 280) *Boyd v Krieg* (17 Cal 548) But if a formal lease be subsequently drawn up in pursuance of the agreement the duty on such lease is not to exceed 8 annas (see proviso, *supra*).

"*Rent reserved*"—This may be 'money,' a share of crops, service, or any other thing of value to be rendered periodically or on specified occasions to the lessor by the lessee in consideration of the lease 'Transfer of Property Act (IV of 1882), sec 105

"*Premium*—This is the price paid or promised' as consider

possession, the executant made over possession of certain lands to his creditor for nine years in liquidation of a debt of Rs 899-12, stipulating for payment of Rs 35 yearly, it was held that it was, in fact, a sale of a term or lease for nine years with a reserved rent of Rs. 35 in consideration of Rs 899-12—the amount of the debt and interest that the debt was satisfied, and not secured when possession was given, and that the stamp-duty leviable was that for a lease with a premium *Ref* (7 Mad 203. See also *Ref* (26 Mad p 474); *In re Parasea Collieries, Ld* (37 Cal 629)

The object of the proviso is to prevent a double levy of duty upon what is practically a single transaction

Ex (a) — Lease includes both a 'patta' and a 'kabuliyat' see sec 2 (16 The exemption is in favour of what are known as agricultural leases which are granted (1) without premium, (2) for a term not exceeding one year, and (3) for an annual rent not exceeding Rs 100 It should be read as follows A lease executed in the case of a cultivator without the payment or delivery of any fine or premium is exempt from duty (1) when a definite term is expressed, and such term does not exceed one year, or (2) when the annual average rent reserved does not exceed one hundred rupees (B C O *6th Mar.*, 1887)

This exemption will cover all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed Rs 100: *In re Bhavan Badhar* (6 Bom 691).

But it applies only to the case of lands let for the purpose of cultivation, and not for any other purpose A kabuliyat executed by cultivators for payment of rent in kind for land occupied by dwelling houses was held to be chargeable with duty *Narayan Ramchandra* v *Dhondu Raghu* (10 Bom. 173)

"*In the case of a cultivator*"—By this term only those persons are connoted who actually cultivate the soil themselves, or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock The class of husbandmen or actual agriculturists is meant; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease: *Ref* (5 All. 360).

A person whose occupation is that of a cultivator and who takes a lease of land for planting cocoanut trees is, in respect of that occupation, a 'cultivator,' and a 'kabulyat' given by him is exempt if the annual rent reserved does not exceed Rs. 100:

For a description of this instrument see sec. 2 (16)

"*An under-lease or sub-lease*"—This is to be distinguished from a transfer of a lease by way of assignment, which is chargeable with a higher duty under Art 63 The distinction will depend on the terms of the instrument In a sub-lease the lessee does not part with the whole of his interest to his sub-lessee, but retains a reversion In a transfer of a lease the rights and interest of the lessee, though not necessarily his liabilities, are conveyed absolutely see Transfer of Property Act (IV of 1882) sec 108 (j)

"*Any agreement to let or sub-let*"—This is chargeable as a lease even although a formal deed of lease may be in contemplation *Ref* (17 Mad. 280) *Boyd* v *Krieg* (17 Cal 548) But if a formal lease be subsequently drawn up in pursuance of the agreement the duty on such lease is not to exceed 8 annas (see proviso, *supra*).

"*Rent reserved*"—This may be 'money,' a share of crops, service, or any other thing of value to be rendered periodically or on specified occasions to the lessor by the lessee in consideration of the lease 'Transfer of Property Act (IV of 1882), sec 105

"*Premium*"—This is the price paid or promised' as consideration for the lease *Id*

Cl (a)—This provides for rent only and no premium Whereby an instrument certain lands were leased for an annual rent of Rs 15, and Rs 45, a sum equal to three years' rent, were stipulated to be paid in advance and the balance of Rs 10 at the end of the term, it was held that the stipulation for payment of Rs 45 was one for the payment of rent in anticipation, and not for the payment of a premium or fine *Ref* (17 Mad 203)

possession, the executant made over possession of certain lands to his creditor for nine years in liquidation of a debt of Rs 899-12, stipulating for payment of Rs 35 yearly, it was held that it was, in fact, a sale of a term or lease for nine years with a reserved rent of Rs. 35 in consideration of Rs 899-12—the amount of the debt and interest · that the debt was satisfied, and not secured when possession was given, and that the stamp-duty leviable was that for a lease with a premium *Ref* (7 Mad 203 See also *Ref* (26 Mad p 474) ; *In re Parasea Collieries Ld* (37 Cal 629)

The object of the proviso is to prevent a double levy of duty upon what is practically a single transaction

Ex (a) – Lease includes both a 'patta and a 'kabuliyat' see sec. 2 (16 The exemption is in favour of what are known as agricultural leases which are granted (1) without premium, (2) for a term not exceeding one year, and (3) for an annual rent not exceeding Rs 100 It should be read as follows -- A lease executed in the case of a cultivator without the payment or delivery of any fine or premium is exempt from duty (1) when a definite term is expressed, and such term does not exceed one year, or (2) when the annual average rent reserved does not exceed one hundred rupees (B C O *6th Mar*, 1887).

This exemption will cover all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may [illegible] : *In re* [illegible]

[illegible] culti-vation, and not for any other purpose A kabuliyat executed by cultivators for payment of rent in kind for land occupied by dwelling-houses was held to be chargeable with duty *Narayan Ramchandra* v *Dhondu Raghu* (10 Bom. 173)

"*In the case of a cultivator*"—By this term only those persons are connoted who actually cultivate the soil themselves, or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock The class of husbandmen or actual agriculturists is meant ; not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease : *Ref* (5 All. 360)

A person whose occupation is that of a cultivator and who takes a lease of land for planting cocoanut trees is, in respect of that occupation, a 'cultivator,' and a 'kabulyat' given by him is exempt if the annual rent reserved does not exceed Rs. 100 : [illegible]

Description of Instrument	Proper Stamp-duty
36. LETTER OF ALLOTMENT OF SHARES in any company or proposed company, or in respect of any loan to be raised by any company or proposed company	One anna

See also CERTIFICATE OR OTHER DOCUMENT (No 19)

Note.

Cf Act I, 1879, Art 40, sch I Cf also 54 & 55, c 39

For the kind of stamp to be used see sec 11 and *App. A*

Description of Instrument	Proper Stamp-duty
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	One anna

Note.

Cf Act I, 1879, Art 41, sch I Cf also 54 & 55 Vic, c. 39

For a definition see sec 2 (3) (c)

For the kind of stamp to be used see sec 11 and *App. A*

LETTER OF GUARANTEE—

See AGREEMENT (No 5)

Description of Instrument	Proper Stamp-duty
38 LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion	Ten rupees

Note.

Cf. Act I, 1879, Art 42, sch. I See also Art 22

For the kind of stamp to be used see *App. A*

Description of Instrument	Proper Stamp-duty
39 MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(*a*) if accompanied by articles of association under section 37 [17] of the Indian Companies Act, 1882 [1913]	Fifteen rupees
(*b*) if not so accompanied	Forty rupees

Exemption

Memorandum of [illegible] association not formed for profit and registered under [illegible] of the Indian Companies Act, 1882 [1913].

Note.

Cf Act I, 1879, Art 43, sch I (*App. D*) Cf also 25 & 26 Vic c [illegible] sec 11

For a description of this instrument see Indian Companies Act (VII of 1913), ss. 17-20

Cl (a).—See Art 10 Act VI of 1882 is repealed by Act VI of 1913 The exemption was previously published by notification (No 3517, 18*th July*, 1890)

For the kind of stamp to be used see *Appx A*

40 MORTGAGE-DEED,

not being [an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No 6)], BOTTOMRY BOND (No 16), MORTGAGE OF A CROP (No 41), RESPONDENTIA BOND (No. 56), or SECURITY-BOND (No 57)—	
(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given	The same duty as a Conveyance (No 23) for a consideration equal to the amount secured by such deed
(*b*) when possession is not given or agreed to be given as aforesaid,	The same duty as a Bond (No 15) for the amount secured by such deed

Explanation.—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of property mortgaged or part thereof, is deemed to give possession within the meaning of this article.

(*c*) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs. 1,000,	Eight annas
and for every Rs 1,000 or part thereof secured in excess of Rs. 1,000.	Eight annas

Exemptions.

(1) Instruments, executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances.

36 LETTER OF ALLOTMENT OF SHARES in any company or proposed company, or in respect of any loan to be raised by any company or proposed company	One anna

See also CERTIFICATE OR OTHER DOCUMENT (No 19)

Note.

Cf Act I, 1879, Art 40, sch 1 Cf also 54 & 55, c. 39

For the kind of stamp to be used see sec 11 and *Appx. A*

37 LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	One anna.

Note.

Cf Act I, 1879, Art 41, sch 1 Cf also 54 & 55 Vic, c 39

For a definition see sec 2 (3) (c)

For the kind of stamp to be used see sec 11 and *Appr. A.*

LETTER OF GUARANTEE—

See AGREEMENT (No 5)

38 LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion	Ten rupees.

Note.

Cf. Act I, 1879, Art 42, sch 1 See also Art 22

For the kind of stamp to be used see *Appr A.*

39. MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(*a*) if accompanied by articles of association under section 37 [17] of the Indian Companies Act, 1882 [1913].	Fifteen rupees
(*b*) if not so accompanied	Forty rupees

Exemption.

Memorandu[illegible] association not formed for profit and registered under [illegible] of the Indian Companies Act, 1882 [1913].

Note.

Cf. Act I, 1879, Art 43, sch i (*Appr. D*) Cf. also 25 & 26 Vic, c. 89, sec. 11.

For a description of this instrument see Indian Companies Act (VII of 1913), ss 17-20

Cl (a) —See Art 10 Act VI of 1882 is repealed by Act VII of 1913

The exemption was previously published by notification (No 3517, 18th July, 1890)

For the kind of stamp to be used see *Appx A*

40 MORTGAGE-DEED,

not being [an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No 6)], BOTTOMRY BOND (No 16), MORTGAGE OF A CROP (No 41), RESPONDENTIA BOND (No. 56), or SECURITY-BOND (No 57)—	
(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given	The same duty as a Conveyance (No 23) for a consideration equal to the amount secured by such deed.
(*b*) when possession is not given or agreed to be given as aforesaid,	The same duty as a Bond (No 15) for the amount secured by such deed

Explanation —A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of property mortgaged or part thereof, is deemed to give possession within the meaning of this article.

(*c*) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs 1,000,	Eight annas
and for every Rs 1,000 or part thereof secured in excess of Rs. 1,000.	Eight annas.

Exemptions.

(1) Instruments, executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security fo payment of such advances

Description of Instrument	Proper Stamp-duty
36 LETTER OF ALLOTMENT OF SHARES in any company or proposed company, or in respect of any loan to be raised by any company or proposed company	One anna

See also CERTIFICATE OR OTHER DOCUMENT (No 19)

Note.

Cf Act I, 1879, Art 40, sch I Cf also 54 & 55, c. 39.
For the kind of stamp to be used see sec 11 and *Appx A.*

Description of Instrument	Proper Stamp-duty
37 LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	One anna

Note.

Cf Act I, 1879, Art 41, sch I Cf also 54 & 55 Vic, c. 39
For a definition see sec 2 (3) (c)
For the kind of stamp to be used see sec 11 and *Appx. A*

LETTER OF GUARANTEE—
See AGREEMENT (No 5)

Description of Instrument	Proper Stamp-duty
38. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion	Ten rupees

Note.

Cf. Act I, 1879, Art 42, sch. I See also Art 22.
For the kind of stamp to be used see *Appx A*

Description of Instrument	Proper Stamp-duty
39. MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(*a*) if accompanied by articles of association under section 37 [17] of the Indian Companies Act, 1882 [1913].	Fifteen rupees
(*b*) if not so accompanied	Forty rupees.

Exemption

Memorandu[illegible] association not formed for profit and registered under [illegible] of the Indian Companies Act, 1882 [1913].

Note.

Cf. Act I, 1879, Art 43, sch i (*Appx. D*) Cf. also 25 & 26 Vic. c. 89, sec. 11.

For a description of this instrument see Indian Companies Act (VII of 1913), ss. 17-20.

Cl. (a).—See Art. 10. Act VI of 1882 is repealed by Act VII of 1913.

The exemption was previously published by notification (No. 3517, 18th July, 1890).

For the kind of stamp to be used see *Appx. A.*

40. MORTGAGE-DEED,

not being [an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6)], BOTTOMRY BOND (No. 16), MORTGAGE OF A CROP (No. 41), RESPONDENTIA BOND (No. 56), or SECURITY BOND (No. 57)—	
(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.
(*b*) when possession is not given or agreed to be given as aforesaid;	The same duty as a Bond (No. 15) for the amount secured by such deed.

Explanation.—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of property mortgaged or part thereof, is deemed to give possession within the meaning of this article.

(*c*) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs. 1,000,	Eight annas.
and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.	Eight annas.

Exemptions.

(1) Instruments, executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for payment of such advances.

been inapplicable *In the matter of Ko Shwe Aung v. Strang Steel & Co* (21 Cal 241)

And where, in consideration of moneys advanced, a trust is created of the stock-in-trade of a business, the instrument is none the less a mortgage *Board of Revenue v. Orr* (19 Mad L. J 613).

The explanation has been added to prevent the evasion of the higher duty on mortgages with possession which is chargeable under cl (*a*)

Cl (c) —This provision is taken from the English Stamp Act, 1891 It in fact reproduces cl (2) of the article on 'mortgage' and is intended to provide for cases of mortgage by further assurance or additional security

"The typical case of a 'substituted security' is one in which the parties to the transaction remain the same, but, one piece of property having been released from the charge, another piece of property is by some instrument made subject to a charge for the same debt" *per* Stirling, L J, *Mount Lyell Mining and Railway Co v. Commissioners* (L R [1905] 1 K B p 168)

"*For the abovementioned purpose*" —These words have no special significance here, but in cl (2) of the English Act they have reference to the terms of cl (1), which is as follows —"Being the only or principal or primary security '*for the payment or repayment of money*'" This must therefore be understood to be the purpose (if any) alluded to

This provision must be distinguished from Art. 32. That article provides for a 'further charge' upon the same security, whereas this relates to a further assurance by the mortgage of additional or substituted security And see *British Oil and Cake Mills, Ld. v. Commissioners* (L R [1903] 1 K B 689) *Lord Suffield v. Commissioners* (L. R [1908] 1 K B. 865)

If the subject of a usfructuary mortgage be immoveable property in the town of Calcutta the duty will be increased by 2 per cent (Ben. Act V of 1911, s 82).

For the kind of stamp to be used see *Appx A* For further exemptions from duty see *Appx. B* For calculation of duty see *Appx. E*.

41. MORTGAGE OF A CROP,

including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—

MORTGAGE OF A CROP.—*cont'd.*

(*a*) when the loan is repayable not more than three months from the date of the instrument—	
for every sum secured not exceeding Rs 200.	One anna
and for every Rs 200 or part thereof secured in excess of Rs 200	One anna
(*b*) when the loan is repayable more than three months, but not more than [eighteen months] from the date of the instrument—	
for every sum secured not exceeding Rs 100.	[Two annas]
and for every Rs 100 or part thereof secured in excess of Rs 100	[Two annas]

Note.

Cf Act I, 1879, Art 29, sch 1

This provision was first published by Not No 1280, 5*th June*, 1885. It was formerly chargeable under Art 29 (now Art 6)

The duty chargeable under cl (*b*) has been reduced to half by Act XV of 1904. This had been previously effected by No. 206 S R. 16*th Jan*, 1903. A further modification has been effected more recently by Act V of 1906 in the time, which had been previously effected by No 2250 S. R 20*th April*, 1905

"*Instrument*"—See sec (2), *n*, and 2 (14).

"*Repayment of a loan*"—see Art. 6, *n*

"*Is or is not in existence*"—These words dispose of the question raised in *Moran* v. *Mittu Bibee* (2 Cal. 58) as to whether an assignment of a crop of indigo not then in existence by way of security for a loan could be a mortgage

Where the owner of a coffee estate in consideration of advances made or to be made up to a specified limit, executed an assignment by way of mortgage, in favour of a Bank, of the whole of his crop of coffee then growing on his estate, it was held that the instrument was chargeable as a mortgage-deed when possession is not given [Art. 40 (*b*)]: *Ref.* (8 Mad. 104). But Art 41 would now provide for such a case.

For the kind of stamp to be used see sec. 11 and *App.* *A*. For calculation of duty see *App.* *E*.

42 NOTARIAL ACT — that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a PROTEST (No 50), made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public *See also* PROTEST OF BILL OR NOTE (No 50)	One rupee

Note.

Cf Act I, 1879, Art 45 sch 1 Cf also 54 & 55 Vic, c 3, s 90, and 33 & 34 Vic, c 97, s 116

"*Instrument*"—See sec 2 (14

"*Made or signed by a Notary Public*"—When a promissory-note or bill-of exchange has been dishonoured by non acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges: Negotiable Instruments Act (XXVI of 1881), sec 99

For the kind of stamp to be used see sec 11 (*a*) and Rule 15 (*d*), *App* A

43. [NOTE OR MEMORANDUM— sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—	
(*a*) of any goods exceeding in value twenty rupees,	Two annas
(*b*) of any stock or marketable security exceeding in value twenty rupees	Subject to a maximum of ten rupees one anna, for every Rs 10,000 or part thereof of the value of the stock or security]

Note.

Cf. Act I, 1879, Art 46, sch. 1 Cf also 45 & 55 Vic, c 39, s 52; 33 & 34 Vic, c. 97, s. 69, and 51 & 52 Vic, c. 8, ss 16, 17

This must be read with Art 5 (a) and Ex. (a). It has been recast by Act VI of 1910

When a broker has succeeded in making a contract he reduces it to writing, and delivers to each party a copy of the terms as reduced to writing by him What he delivers to the seller is called the sold note to the buyer the bought note No particular form is required Benjamin, 'Sale of Personal Property' (5th Ed), p. 285. Blackburn 'Contract of Sale (3rd Ed) p 89

There may be a verbal contract, although 'bought and sold notes' have been exchanged but where there is not, and the contract has been put into writing no evidence, except the notes themselves, can be given in proof of it *Kalli v. Caramalli Fazal* (14 Bom. p 110) And see Indian Evidence Act (I of 1872), sec 91

For the kind of stamp to be used see sec 11 (a) and *Appx A*.

44. NOTE OF PROTEST BY THE MASTER OF A SHIP *See also* PROTEST BY THE MASTER OF A SHIP (No 51)	Eight annas.

Note.

Cf Act I, 1879, Art 47, sch I

See Art 51, *n*

For the kind of stamp to be used sec *Appx A*.

ORDER FOR THE PAYMENT OF MONEY

See BILL OF EXCHANGE (No 13)

Note.

See sec 2 (3), *n*, for construing such documents

45 PARTITION—

Instrument of [as defined by section 2 (15)].	The same duty as a Bond (No 15) for the amount of the value of the separated share or shares of the property

N. B.—The largest share remaining after the property is partitioned (or, if there are two or more shares of equal value and not smaller than any of the others shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.

Provided always that—

(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty

42 NOTARIAL ACT —	
that is to say, any instrument endorsement, note, attestation, certificate or entry not being a PROTEST (No 50), made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public	One rupee
See also PROTEST OF BILL OR NOTE (No 50)	

Note.

Cf Act I, 1879, Art 45 sch I Cf also 54 & 55 Vic, c 3, s. 90, and 33 & 34 Vic, c 97, s 116

"*Instrument*" —See sec 2 (14

"*Made or signed by a Notary Public*" —When a promissory note or bill-of-exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each Such note must be made within a reasonable time after dishonour and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges Negotiable Instruments Act (XXVI of 1881), sec 99

For the kind of stamp to be used see sec 11 (a) and Rule 15 (d), *App A*

43. [NOTE OR MEMORANDUM—	
sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—	
(*a*) of any goods exceeding in value twenty rupees,	Two annas
(*b*) of any stock or marketable security exceeding in value twenty rupees	Subject to a maximum of ten rupees one anna, for every Rs 10,000 or part thereof of the value of the stock or security]

Note.

Cf Act I, 1879, Art. 46, sch i Cf also 45 & 55 Vic, c 39, s 52; 33 & 34 Vic, c 97, s. 69, and 51 & 52 Vic, c. 8, ss 16, 17

chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas ,

(*b*) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue ,

(*c*) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas

Note.

Cf Act I, 1879, Art 37, sch I (*Appx D*) Cf also 54 & 55 Vic. c. 39, s 73 and 33 & 34 Vic c 97, s 94

For a description of this instrument see sec 2 (15)

Under the previous Act duty was levied on the value of "the property divided, which words were judicially interpreted to mean 'the entire property affected by the partition' The duty is now leviable on the '*value of the separated share or shares*', although the parties to a partition have to bear it, each in proportion to his share (see s 29, *a*)

The levy of duty is further based on the assumption that at whichever partner's instance a partition takes place, it is the smaller shares that are separated from the larger, and not the larger from the smaller The operation is the same whether it is the larger or the smaller shareholder who is the initiator, and the taxation should not be different in the two cases The following illustrations will show how the alteration in the law will operate—

(1) Four equal shareholders, each having a four-anna share, agree to partition The duty is levied on 12 annas of the value of the whole property

(2) Of three shareholders, having respectively shares of one half, one-third, and one sixth, two apply to have their shares partitioned off The duty is levied on half the value of the property.

(3) One shareholder having two-thirds of a property, obtains separation from the remainder who hold jointly one third and who desire to continue to hold their share jointly. The duty is levied on one third of the value of the property

The reasons for these three propositions may be stated thus,—

(1) Duty is levied on 12 annas because that represents three-fourths of the whole, and these three shares are deemed to be separated from the remaining one fourth share

(2) Duty is levied on half because the one third and one-sixth shares, which are partitioned off together constitute a half

(3) Duty is levied on one third because it is the smaller share, on the assumption that it is the smaller share which is separated from the larger and not the larger from the smaller

The market value of the property which is the subject-matter of partition should furnish the basis for calculating the stamp duty *Ref.* (2 All p 668)

Cl (a)—This provision was intended to prevent a double levy of duty on what is practically a single transaction Similar provisions are attached to Arts 35 and 58

Cl (b)—This was first published by No 1381, 8th *June*, 1823

Cl (c)—This is new and its object is similar to cl (*a*)

"*A final order* —This means "the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed " *Stamp Reference* (36 All. 137) See also sec 2 (15), *n*

For the kind of stamp to be used see *App* *A* For calculation of duty see *App* *E*

46. PARTNERSHIP—

A —INSTRUMENT OF—	
(*a*) where the capital of the partnership does not exceed Rs. 500	Two rupees eight annas
(*b*) in any other case	Ten rupees
B.—DISSOLUTION OF—	Five rupees

Note.

Cf. Act I, 1879, Arts 32, 33, sch i (*Appx. D*)

'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them: Indian *Contract Act (IX of 1872) sec. 239. If a partnership be formed for* banking purposes, consisting of more than ten persons, or for any other purpose consisting of more than twenty persons, it must be registered as a company: see Indian Companies Act (VII of 1913)

'Partnership' is the relation which subsists between persons who have agreed to share the profits of a business carried on by all or any of them or on behalf of all of them: Pollock.

chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas ;

(*b*) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue ;

(*c*) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas.

Note.

Cf. Act I, 1879, Art. 37, sch. I (*App. D*). Cf. also 54 & 55 Vic. c. 39, s. 73 and 33 & 34 Vic. c. 97, s. 94.

For a description of this instrument see sec. 2 (15).

Under the previous Act duty was levied on the value of "the property divided," which words were judicially interpreted to mean "the entire property affected by the partition." The duty is now leviable on the "*value of the separated share or shares*", although the parties to a partition have to bear it, each in proportion to his share (see s. 29, *d*).

The levy of duty is further based on the assumption that at whichever partner's instance a partition takes place, it is the smaller shares that are separated from the larger, and not the larger from the smaller. The operation is the same whether it is the larger or the smaller shareholder who is the initiator, and the taxation should not be different in the two cases. The following illustrations will show how the alteration in the law will operate—

(1) Four equal shareholders, each having a four-anna share, agree to partition. The duty is levied on 12 annas of the value of the whole property.

(2) Of three shareholders, having respectively shares of one half, one-third, and one sixth, two apply to have their shares partitioned off. The duty is levied on half the value of the property.

(3) One shareholder having two-thirds of a property, obtains separation from the remainder who hold jointly one-third and who desire to continue to hold their share jointly. The duty is levied on one-third of the value of the property.

or an indemnity against liabilities, or both, the amount of liabilities from which, as between his partner and himself, he is relieved, must be included in the consideration upon which the duty is paid Dart, 'Vendors and Purchasers' (6th Ed), p 599

For the kind of stamp to be used see *Appx A.*

PAWN OR PLEDGE

See AGREEMENT RELATING TO DEPOSIT of TITLE DEEDS, PAWN OF PLEDGE (No 6)]

47 [POLICY OF INSURANCE—	If drawn singly	If drawn in duplicate, for each part.
A —SEA INSURANCE (*see* section 7)—		
(*1*) for or upon any voyage—		
(i) where the premium or consideration does not exceed the rate of two annas or one eighth per centum of the amount insured by the policy	One anna	Half an anna.
(ii) in any other case, in respect of every full sum of one thousand *five hundred* rupees and also any fractional part of one thousand *five hundred* rupees insured by the policy	*One* anna.	*Half an* anna
(*2*) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—		
where the insurance shall be made for any time not exceeding six months;	Two annas	One anna
where the insurance shall be made for any time exceeding six months and not exceeding twelve months.	Four annas	Two annas

B.—FIRE-INSURANCE—

(*1*) in respect of an original policy—	
(i) when the sum insured does not exceed Rs. 5,000;	Eight annas.
(ii) in any other case;	One rupee

POLICY OF INSURANCE—*contd*

Description of Instrument	Proper Stamp-duty
(2) in respect of each receipt for any payment of a premium on any renewal of an original policy	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No 53]
C.—ACCIDENT AND SICKNESS INSURANCE—	
(*a*) against railway accident, valid for a single journey only.	One anna.

Exemption

When issued to a passenger travelling by the intermediate or the third class in any railway

(*b*) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceeds Rs 1,000, for every Rs 1,000 or part thereof	Two annas.
D.—LIFE INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, except such a RE-INSURANCE as is described in Division E of this article—	
for every sum insured not exceeding Rs. 1,000, and also for every Rs. 1,000 or part thereof insured in excess of Rs 1,000—	
(i) if drawn singly	Six annas
(ii) if drawn in duplicate, for each part ...	Three annas

Exemption

Policies of life insurance granted by the Director General of the Post Office of India in accordance with rules for Postal Life Insurance issued under the authority of the Government of India.

E.—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a POLICY OF SEA-INSURANCE OR A POLICY OF FIRE INSURANCE, with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.	One-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee

POLICY OF INSURANCE.—*contd.*

General Exemption.

Letter of cover or engagement to issue a policy of insurance Provided that, unless such letter or engagement bears the stamps prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned

Note.

Cf Act I, 1879, Art 49, sch I, Art 14 (*a*), sch II, Act I, 1888, and Act VI, 1894, (*Appx D*) Cf also 54 & 55 Vic, c 39, ss 91—98.

For descriptions of these instruments see sec 2 (19), (20) This article has been redrafted with alterations

A.—See sec 7 This was first introduced by Act VI of 1894. It has been recast by Act V of 1906, with the object of legalising a practice which prevailed of dividing the stamp duty on Marine insurance policies when issued in duplicate

The Italics indicate a reduction in duty made by Not No. 5799, *Exc. 26th Nov*, 1909, with effect from *1st April*, 1910

B.—This was first introduced by Act I of 1888 The duty has been reduced by Act V of 1906 Whether a policy is a 'renewal' or a 're-insurance' will depend on the form in which it is drawn.

C—This provision provides a lighter duty than that which was formerly chargeable as for life policies

D.—See sec. 2 (19), (*b*). 'Other insurance' would mean any other personal insurance against a contingency.

E.—This was first introduced by Act VI of 1894 The duty on re-insurance has been reduced

The general exemption was Art. 14 (*a*), sch II of the Act of 1879 See also sec 2 (20), *n* A penalty is provided by sec. 66 for not making out a duly stamped policy.

For the kinds of stamp to be used see sec. 11, and *Appx. A.* For calculation of duty see *Appx. E*

48. POWER-OF-ATTORNEY [as defined by section 2 (21)], not being a PROXY (No. 52),—	
(*a*) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents,	Eight annas

POWER OF ATTORNEY—*contd.*

(*b*) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882,	Eight annas.
(*c*) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a),	One rupee.
(*d*) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally,	Five rupees
(*e*) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally,	Ten rupees
(*f*) when given for consideration and authorizing the attorney to sell any immoveable property	The same duty as a Conveyance (No 23) for the amount of the consideration
(*g*) in any other case	One rupee for each person authorized

N B —The term "registration" includes every operation incidental to registration under the Indian Registration Act, 1877 [1908]

Explanation

For the purpose of this Article more persons than one when belonging to the same firm shall be deemed to be one person

Note.

Cf. Act I, 1879, Art, 50, sch i (*App D*) Cf also 54 & 55 Vic, c 39, and 33 & 34 Vic, c 97

For a description of this instrument see sec 2 (21)

Cl. (a).—This must be read along with the note '*N B*', which has been added *to make it clear the an instrument of* at this character will cover the whole of the transaction which takes place before a registering officer at the time of registration of a document. And this is in accordance with previous judicial opinion

Cl. (b) —This was previously announced by No 3887, 19th Oct, 1883

Cl (c) —This refers to one transaction It must be read with the explanation at the end of the article The execution of a deed of sale and the presentation thereof for registration is one transaction (*Ben.* Stamp Manual, 1911, p 138)

A power on behalf of thirty-six persons jointly *interested* in a particular fund authorizing him to do a single act, *viz*, to receive payment of the money is chargeable under this provision: *Ref* (9 Mad 358) .

Cl. (d).—This refers to a general power The explanation, which must be read with it, would indicate that such a power might be in favour of more than five persons if they together constituted a firm, *for a firm is deemed to be but one person*

Persons who have entered into partnership with one another are collectively called a 'firm' Indian Contract Act (IX of 1872), sec 239

Cl (e) —See cl *(d)*, *n*

Cl. (f).—This provision is intended to reach a class of transactions which are in reality conveyances of immoveable property. It is for this reason that an *ad valorem* duty is imposed as on a conveyance

Cl (g) —This must be read with cl (*e*) The duty imposed of one rupee "for each person authorized" presumably means 'for each person in excess of ten'

For the kinds of stamps to be used see *Appx A* For exemptions from duty see *Appx B* For calculation of duty under cl. *(f)* see *Appx E*

49 PROMISSORY NOTE—

[as defined by section (2) 22]	The same duty as a bill-of-exchange (No 13) according as it is payable on demand, or payable otherwise than on demand, as the case may be.

Note

Cf Act, I 1879, Art 11, sch i Cf also 54 & 55 Vic, c 39, s 33, and 33 & 34 Vic, c 97, s 49

For a description of promissory-notes see sec 2 (22)

There is no longer any exemption in favour of bills of-exchange payable on demand of the value of Rs 20 or less Promissory notes, and also cheques, are similarly affected

For the kinds of stamps to be used see *Appx A* For further exemptions see *Appx. B.* For calculation of duty see *Appx. E.*

50. PROTEST OF BILL OR NOTE—

that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill-of-exchange or promissory note.	One rupee.

Note.

Cf Act I, 1879, Art. 45, sch. i Cf also 54 & 55 Vic, c. 36

When a promissory-note or bill-of-exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a Notary Public Such certificate is called a protest. Negotiable Instruments Act (XXVI of 1881) sec 100. See also ss 99—104A. And see Art 42, n

A bill-of-exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill not accepted Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured *Id*, sec. 91. A promissory note, bill-of-exchange, or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same *Id*, sec 92 See also ss. 61, 75, 76, 86, and 115

For the kind of stamp to be used see *Appx A*

51. PROTEST BY THE MASTER OF A SHIP,

that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	One rupee

See also NOTE OF PROTEST BY THE MASTER OF A SHIP (No 44)

Note.

Cf. Act I, 1879, Art. 50, sch I

"*Master of a ship.*"—This means, when used with reference to a ship, any person (except a pilot or harbour-master) having for the time being, control or charge of the ship. General Clauses Act (X of 1897), sec. 3 (32)

"*Ship*"—This includes every description of vessel used in navigation not exclusively propelled by oars. *Id*, sec. 3 (51)

The protest is a declaration or narrative by the master of the particulars of the voyage, of the storms or bad weather which the vessel has encountered, the accidents which have occurred, and compelled him, if at an intermediate port, to resort to it, and the

conduct, which in cases of emergency, he had thought proper to pursue Protests are also made by the master against the charterers of the ship or the consignees of goods for not loading or unloading the vessel pursuant to contract, or within reasonable or stipulated delays Abbott. 'Shipping' (14 Ed), p 575

"Protests are important for this purpose, and this only to state the damage which has occurred, and that it has taken place for the sake of supporting a claim against the underwriters ; not that the owner of the ship would be debarred from claiming against the underwriters, but, of course, unless it is stated in the protest, suspicion arises that the damage did not occur *per* Dr Lushington, *The Santa Anna* (32 L J, P M A p 200)

For the kind of stamp to be used see *Appx A*

52. PROXY—

empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (*a*) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (*b*) a local authority, or (*c*) proprietors, members or contributors to the funds of any institution	One anna

Note.

Cf Act I, 1879, Art. 51, sch 1 Cf also *54 & 55 Vic, c. 39, s 80*

A proxy is a power-of-attorney, of a special character and for a particular purpose herein stated, and would be chargeable under Art 48, with a higher duty, if it did not conform to this description.

"*To vote at any one election*"—This addition was found necessary as the word 'meeting' alone was inadequate to cover the case

"*Local authority*"—See sec 8, *n*.

For the penalties attaching to the misuse of proxies see sec. 62

For the kind of stamp to be used see sec. 11 and *Appx. A*.

53. RECEIPT—

[as defined by section 2 (23)] for any money or other property the amount or value of which exceeds twenty rupees	One anna

Exemptions.

Receipt—

(*a*) endorsed on or contained in any instrument duly stamped or exempted under the proviso to section 3 (instruments executed on behalf of the Government) acknowledging the

RECEIPT.—*contd*

receipt of the consideration-money therein expressed, or the receipt of the principal money, interest or annuity or other periodical payment thereby secured,

(*b*) for any payment of money without consideration;

(*c*) for the payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St George and Bombay) of Inam lands,

(*d*) for pay or allowances by non-commissioned officers or soldiers of His Majesty's Army or His Majesty's Indian Army, when serving in such capacity, or by mounted police constables;

(*e*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;

(*f*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity,

(*g*) given by a headman or lambardar for land revenue or taxes collected by him,

(*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for,

Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for

Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.

[*See also* POLICY OF INSURANCE No 57-B (2)]

Note.

Cf. Act I, 1879, Art. 52, sch. i; Art. 15, sch. ii (*Appx. D*). Cf also 54 & 53 Vic, c 39.

For a description of this instrument see sec. 2 (23)

"*Which exceeds twenty rupees.*"—A receipt *for* Rs. 20 therefore requires no stamp.

A duplicate receipt would be liable to stamp duty under Art. 25 (No. 2155, *20th July*, 1883) But the same purpose may be served equally well by copies of the original, which need not be stamped (*B C. O* No 17 T F, 19*th Aug*, 1884)

Cl. (a).—An endorsement on a mortgage acknowledging the receipt of the sum secured thereby is exempt under this provision *Ref.* (10 Mad 64) And see also sec (14), *n*

Where from the number of receipts endorsed on a bond there was no longer room for receipts to be written, it was held that receipts upon blank paper annexed to the bond might be read in evidence. *Orme* v *Young* (4 Camp 336) And so also receipts endorsed on a scrip certificate, duly stamped, acknowledging the payment of two instalments at the specified dates, would be exempt *London and Westminster Bank* v *Commissioners* (L R [1900] 1 Q B 166); or upon redeemable debenture stock *Firth & Sons, Ld* v *Commissioners* (L R [1904] 2 K B 205

"*On any instrument duly stamped*"—See sec 2 (11), (14)

"*Or exempted under the proviso to section* 3"—See sec 3, *n*. See also *Skrine* v *Elmore* (2 Camp 407)

Cl (b)—A receipt given by a barrister for his fee is exempt, as the payment is made without consideration *Ref* (9 Mad 140) · *Ref.* (16 All 132) *In re Beavan* (23 L J, Ch 536)

More recently it has been held in England that counsel's receipts are not exempt *General Council of the Bar* v *Commissioners* (L. R. [1907] 1 K B 462)

A receipt given by a Secretary or other Manager of a Club to a member acknowledging a payment of money exceeding Rs 20, on account of a Club bill, is liable to stamp-duty *Ref.* (10 Mad 85)

And so also a receipt by a municipality acknowledging payment of house-tax exceeding Rs 20, inasmuch as the payment is not gratuitous but in satisfaction or discharge of a legal obligation. The exemption was intended apparently to apply to receipts for 'voluntary payments,' which in the ordinary legal acceptation of the term are payments without consideration, such as payments made merely in consideration of natural love: *In re Karachi Municipality* (12 Bom 103) And see sec 2 (23), *n*

A payment of money by a cashier to an assistant in a firm is a payment without consideration *In re Barn & Co* (*37 Cal. 634*).

Cl (c)—"*Rent by a cultivator*"—See Art 35, *n* But see also *Emperor* v. *Dungar Singh* (31 All 36)

Cl (d)—This is a modification of No 1101, 13*th Feb*, 1874.

Cls (e), (f)—These were first announced by No 1101, 13*th Feb*, 1874

Cl. (g)—This is on the same footing as the exemption in cl (*c*)

Cl. (h)—An intimation which a bank gives to its customer that a certain sum has been paid into his credit by a third person has been held to be not chargeable A receipt to be a 'receipt' or 'discharge' must be given to the party who makes the payment *In the matter of the Unconvenanted Service Bank, Ld* (4 Cal 829)

This would seem at first sight to be in conflict with the first proviso, but possibly the proviso refers to the receipt which would be given to the third party, which would of course be chargeable Such a receipt would be an acquittance given by the bank *on behalf of* its customer, and as such would be liable to duty

A mere note or memorandum of the payment of a sum of money on a piece of paper is not a 'receipt' unless it is given to the person to whom the money is due, to be kept by him as his voucher *Day* v *Glaister* (37 Sc L R 736).

A memorandum importing that one party had paid a sum of money, but importing no acknowledgment from the other of his having received it is not a receipt *Rex* v *Harvey* (R & R 227).

"*Money or securities*"—See sec 2 (10), *n*, and 2 (16 *A*)

"*Banker*"—See sec 2 (1)

A memorandum of a transaction whereby one debt is set off against another of equal amount and both thereby discharged is a receipt and requires a stamp "When the parties agree to consider both debts discharged without actual payment it has the same effect, because in contemplation of law a pecuniary transaction is supposed to have taken place by which the debt was then paid": *per* Lord Campbell, C J, *Livingstone* v *Whiting* (15 Q B 722)

See also ss 2 (23), 30, 34, 35 (*b*), and 65, *ante*.

For the kind of stamp to be used see sec 11 and *Appx A*. For other exemptions from duty see *Appx B*

54. RECONVEYANCE OF MORTGAGED PROPERTY—

(*a*) if the consideration for which the property was mortgaged does not exceed Rs. 1,000,	The same duty as a Conveyance (No 23) for the amount of such consideration as set forth in the Reconveyance
(*b*) in any other case ...	Ten rupees

Note

Cf Act I, 1879, Art 53, sch 1 (*Appx. D*) Cf. also 51 & 55 Vic c 39

An instrument of this nature is sometimes resorted to when a mortgage has been effected in the English form, *i. e.*, "where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed" Transfer of Property Act (IV of 1882) sec 58 (*e*)

For the kind of stamp to be used see *Appx. A*

55. RELEASE,

that is to say, any instrument [not being such a release as is provided for by section 23 A], whereby a person renounces a claim upon another person or against any specified property—	
(*a*) if the amount or value of the claim does not exceed Rs 1,000	The same duty as a Bond (No 15) for such amount or value as set forth in the Release
(*b*) in any other case	Five rupees

Note.

Cf Act I, 1879, Art 54, sch I (*Appx D*) Cf also 54 & 55 Vic. c 39

"*Instrument*"—See sec 2 (14)

Not being such a release, &c'—The reference to the new section 23*A*, which deals with instruments relating to the mortgage of marketable securities, is an amendment by Act XV of 1904.

"*A person*"—See sec 62, *n*

"*Renounces a claim*."—A deed by which one co owner renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for life out of certain specified property was held to be a release. *Ref.* (18 Mad 233) And so is the relinquishment of his claim by a reversioner: *Krishnaji Narayan v Balkrishna Venkatesh* (33 Bom 657) And see sec. 2 (15), *n*

And so a document wherein a certified purchaser of property sold in execution of a decree recites that the real owner of the property is his brother, and that he himself has no right or claim of any kind therein, is a release, for the executant thereby renounces all claim which he may have, or be supposed to have, against the property of which he is recorded as the certified purchaser. It could not be a 'conveyance' or a 'transfer,' for the executant has nothing to transfer, nor does he pretend to transfer anything *Ref* (24 All. 372)

Where an instrument set forth that *J.* and *S* relinquished their right to certain property in favour of their brother *E.*; that *E* was to discharge certain debts, and that he was to pay an annuity to *J* and *S*—the document being executed by *J* and *S.* but not by *E*, it was held that the provisions purporting to be in favour of *J.* and *S* were a mere recital of the consideration moving from *E*, and that the instrument was chargeable as a release. *Eknath* v *Jagannath* (9 Bom 417) And see also *Great Northern Railway Co* v *Commissioners* (L R [1899] 2 Q B. 652), *Garnett* v *Commissioners* (81 L T 633)

An instrument by which trustees make over trust property to a *cestui que trust* in pursuance of the trust is not a release, for the parties who execute it do not renounce any claim on the property nor on the person to whom it is transferred *Ref* (7 Mad 350). But see Art 62 (*c*)

"*Specified property*"—See sec 2 (10), *n*

"*As set forth in the release*"—See sec 27

For the kind of stamp to be used see *Appx A*

56. RESPONDENTIA-BOND—

that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a Bond (No 15) for the amount of the loan secured

Note.

Cf Act I, 1879, Art 55, sch I

There is a distinction between this and a Bottomry Bond (Art 16), which is the hypothecation of a ship This relates to the cargo only. The exemption contained in sec 3 (2) affecting the former class of bonds, would, it is presumed, have no application to these: see Art. 16, *n*

For the kind of stamp to be used see *Appx A*. For calculation of duty see *Appx E*

REVOCATION OF ANY TRUST OR SETTLEMENT.

See SETTLEMENT (No 58), TRUST (No 64)

57. SECURITY-BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—

SECURITY-BOND OF MORTGAGE-DEED —*contd*

(*a*) when the amount secured does not exceed Rs. 1,000	The same duty as a Bond (No 15) for the amount secured
(*b*) in any other case	Five rupees

Exemptions

Bond or other instrument, when executed—

(*a*) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act

(*b*) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem

(*c*) under No 3 A of the rules made by the Governor of Bombay in Council under section 70 of the Bombay Irrigation Act, 1879

(*d*) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884, or by their sureties, as security, for the repayment of such advances,

(*e*) executed by officers of Government or their sureties to secure the due execution of an office or the due account ing for money or other property received by virtue thereof

Note.

Cf Act I, 1879, Art 14, sch 1, and Arts 6, 12, sch II (*Appx. D*)

For a description of Bonds see sec 2 (5) A security-bond to come under this article must be confined to the purposes specified The advantage, as in Art 2, lies in the provision of a maximum limit of Rs 5.

"*Or other property*"—See sec 2 (10), *n.* These words are due to the views expressed in *Ref.* (5 All 788) See also *Ex. (e)*

"*Executed by a surety*"—The benefits of a limited duty have been extended to this class of instrument.

Cl (a.)—The limit of duty in any case is Rs 5

Cl. (b)—A mortgage-deed executed by a cashier for the due fulfilment of his duties as such, and for the repayment of any sum he

may be found liable for to an extent not exceeding Rs 6,000 would be chargeable under this clause *McDowell & Co.* v *Ragava Chetty* (27 Mad. 71)

"*In any other case*"—These words have reference to the amount. The meaning is 'when the amount secured *does* exceed Rs. 1000.'

For the kind of stamp to be used see *Appx A* For further exemptions see *Appx B*

58 SETTLEMENT— A.—INSTRUMENT OF (including a deed of dower).	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement :

Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed the duty on such instrument shall not exceed eight annas.

Exemptions

(*a*) Deed of dower executed on the occasion of a marriage between Muhammadans.

(*b*) Hludassa, that is to say, any settlement of immoveable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs 10 has been paid

B —REVOCATION OF— *See also* TRUST (No. 64)	The same duty as a Bond (No 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees

Note.

Cf Act. I, 1879, Art. 57, sch I (*Appx D*) Cf also 54 & 55 Vic, c. 39, ss 104—6, and 33 & 34 Vic., c. 97, ss 124—6

For a description of this instrument see sec. 2 (24)

Cl. A —An agreement when made in writing, to effect a settlement, is chargeable as a settlement, but if a formal deed be after-

wards drawn up, the duty on it is not to exceed eight annas The object of the proviso is to prevent the duty being levied twice upon a single transaction

A settlement made under a power of appointment is chargeable under Art 7, and not under this *In re Abdulla Haji* (35 Bom 444)

Ex (a) —This exemption was previously notified by No 855, 19*th Feb*, 1886

Ex (b).—See sec 27 *n*

"*As set forth in such settlement*" — These words are to be construed with '*value*' not with '*property*'

"If the terms 'as set forth in such settlement,' refer to the property settled, the duty is chargeable not on the value of the property which may be mentioned in the settlement, but on the value of the interest or interests created by the instrument which may or may not be co equal to the value of the property But if this was intended, the intention might have been less clumsily expressed We are, however, of opinion that the terms apply not to the interests created by the instrument, but to the value set forth in the settlement, and the law suggests that the settlor should insert the value It is obvious that it must often be difficult and sometimes impossible, to value the interests created by a settlement, and the Legislature has, we imagine, on this ground amended the law by the introduction of the words we are considering" *per* Turner, C. J, *Ref* (8 Mad 453) And see also sec 27

For the kind of stamp to be used see *Appx A* For calculation of duty see *Appx E*

59 SHARE-WARRANTS

to bearer issued under the Indian Companies Act, 1882 [1913]	[One and a half times] the duty payable on a Conveyance (No 23) for a consideration equal to the nominal amount of the shares specified in the warrant.

Exemptions

Share-warrant when issued by a company in pursuance of the Indian Companies Act, 1882 [1913], section 30 [43], to have effect only upon payment, as composition for that duty, to the Collector of Stamp-revenue, of—

(*a*) [one and a half] per centum of the whole subscribed capital of the company, or

SHARE-WARRANTS—*contd*

(*b*) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—[one and a half] per centum of the additional capital so issued

Note.

Cf Act VI, 1882, sec 35 Cf also 54 & 55 Vic, c 39, 50 & 51 Vic, c 15, sec 7, 30 & 31 Vic, c 131, sec 33

This provision has been transferred from the Indian Companies Act (VI of 1882), sec 35, para 1 while para 2 has been embodied in sec 62 (2, *ante* And see also the Indian Companies (Consolidation) Act, 1913, ss 43 48 and sec 62 (2, *n ante* The duty on share warrants has been doubled by Act VI of 1910

The exemption was previously notified (No. 5199, *1st Nov* 1895)

For the kind of stamp to be used see *App* *A* For calculation of duty see *App* *F*

SCRIP—

See CERTIFICATE (No 19)

60. SHIPPING ORDER—

for or relating to the conveyance of goods on board of any vessel.	One anna

N

Cf Act I, 1879, Art 58, sc[illegible]

For the kind of stamp to b[illegible] and *App* *A*

61 SURRENDER OF LEASE

(*a*) when the duty with [illegible] is chargeable does [illegible] [illegible]ase [illegible]ive [illegible]ees;	The duty wit[illegible] which such leas[illegible] is chargeable.
[illegible]y other case ..	Five rupees.

Exem[illegible]

of lease, when s[illegible] [illegible]mpted

N[illegible]

[illegible]9, Art. 59, sch [illegible]

[illegible] render of a lea[illegible]

ing [illegible] [illegible]nder the lease

ment [illegible] [illegible]d the lease [illegible]

of Prop[illegible] [illegible]82), sec 3[illegible]

Cl ([illegible] [illegible]) and Art.

Cl. (b[illegible] case[illegible]

exceed Rs [illegible]

The exemption would presumably cover leases exempted by notification also (see Art 63, *n*)

For the kind of stamp to be used see *App. A.*

62. TRANSFER—

(whether with or without consideration)—	
(*a*) of shares in an incorporated company or other body corporate	One [half] of the duty payable on a Conveyance (No 23) for a consideration equal to the value of the share
(*b*) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8,	One [half] of the duty payable on a Conveyance (No 23) for a consideration equal to the face amount of the debenture
(*c*) of any interest secured by a bond, mortgage-deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees,	The duty with which such bond, mortgage-deed or policy of insurance is chargeable
(ii) in any other case	Five rupees.
(*d*) of any property under the Administrator General's Act, 1874, section 31,	Ten rupees
(*e*) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees or such smaller amount as may be chargeable under clauses (*a*) to (*c*) of this Article

Exemptions

Transfers by endorsement—

(*a*) of a bill-of-exchange, cheque or promissory note,

(*b*) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods.

SHARE-WARRANTS—*contd*

(*b*) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—[one and a half] per centum of the additional capital so issued

Note.

Cf Act VI, 1882, sec 35 Cf also 54 & 55 Vic, c 39, 50 & 51 Vic, c 15, sec 7, 30 & 31 Vic, c 131, sec 33

This provision has been transferred from the Indian Companies Act (VI of 1882), sec 35, para 1 while para 2 has been embodied in sec 62 (2), *ante* And see also the Indian Companies (Consolidation) Act, 1913, ss 43 48 and sec 62 (2), *n ante* The duty on share warrants has been doubled by Act VI of 1910

The exemption was previously notified (No 5199, *1st Nov* 1895)

For the kind of stamp to be used see *Appx A* For calculation of duty see *Appx F*

SCRIP—

See CERTIFICATE (No 19)

60. SHIPPING ORDER—

for or relating to the conveyance of goods on board of any vessel	One anna

Note.

Cf Act I, 1879, Art 58, sch 1

For the kind of stamp to be used see sec 11 and *Appx A*

61. SURRENDER OF LEASE—

(*a*) when the duty with which the lease is chargeable does not exceed five rupees,	The duty with which such lease is chargeable
(*b*) in any other case ...	Five rupees

Exemptions

Surrender of lease, when such lease is exempted from duty.

Note.

Cf. Act I, 1879, Art. 59, sch. 1, Art 16, sch II (*Appx D*)

An express surrender of a lease is effected by the lessee yielding up his interest under the lease to the lessor by mutual agreement between them, and the lease is thereby terminated *Transfer* of Property Act (IV of 1882), sec 3

Cl. (a).—See sec. 2 (16) and Art 35

Cl (b)—'In any other case' means 'when the duty does exceed Rs 5'

The exemption would presumably cover leases exempted by notification also (see Art 63, *n*).

For the kind of stamp to be used see *App. A*

62. TRANSFER—

(whether with or without consideration)—	
(*a*) of shares in an incorporated company or other body corporate	One [half] of the duty payable on a Conveyance (No 23) for a consideration equal to the value of the share
(*b*) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8,	One [half] of the duty payable on a Conveyance (No 23) for a consideration equal to the face amount of the debenture
(*c*) of any interest secured by a bond, mortgage-deed or policy of insurance—	
(i) if the duty on such bond, mortgage deed or policy does not exceed five rupees,	The duty with which such bond, mortgage-deed or policy of insurance is chargeable
(ii) in any other case	Five rupees
(*d*) of any property under the Administrator-General's Act, 1874, section 31,	Ten rupees
(*e*) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees or such smaller amount as may be chargeable under clauses (*a*) to (*c*) of this Article

Exemptions

Transfers by endorsement—

(*a*) of a bill of exchange, cheque or promissory-note ;

(*b*) of a bill of lading, delivery order, warrant [illegible] goods, or other mercantile document of title to goo[illegible]

Transfers by endorsement—*contd*

(*c*) of a policy of insurance

(*d*) of securities of the Government of India

See also section 8

Note.

Cf Act I, 1879, Art 60, sch i Art 17, sch ii (*Appx D*). Cf also 54 & 55 Vic, c 39

This article provides specially for transfers of certain classes of property, which are specified, at a lower rate of duty. See also sec 2, (10), *n*

The duty under the first two clauses has been raised by Act VI of 1910

"*With or without consideration*"—These words have been added to prevent transfers of this description, when made without consideration, being charged as 'gifts' (Art 33) with a heavier duty

Cl.(a)—The words "incorporated company or other body corporate" have been substituted for 'company or association'

Blank transfers of shares are not chargeable

Cl (b)—This is a special provision, and relates only to debentures which are marketable securities It has no application to debentures payable to bearer And see sec 8, and Art 27.

Cl (c)—The transfer of a lease has been omitted from this clause, and forms the subject of a separate provision in Art 63

Where a mortgage debt is assigned to a third party and the mortgagor and mortgagee both join in the assignment the instrument is chargeable as a 'transfer of a mortgage', and not as a 'release' *Humphreys* v *Commissioners* (81 L T 199) See also *Wale* v *Commissioners* (L R 4 Ex D 270)

Cl.(d).-Sec 31 of Act II of 1874 provides for the transfer by a private executor or administrator of property vested in him as such to the Administrator General if he wishes to divest himself of such charge.

Cl (e)—The words 'without consideration' would seem to be superfluous here, as they occur under the heading.

"*Trustee to a beneficiary*"—Under the previous Act it was held that a transfer by trustees of trust property to a *cestui que trust* in pursuance of the trust need not be made for pecuniary consideration, and if the nominal consideration were omitted the transfer would not be chargeable: *Ref.* (7 Mad. 350).

'Trustee' includes every person holding expressly, by implication, or constructively a fiduciary character: Specific Relief Act (I of 1877), sec. 3 And see Indian Trusts Act (II of 1882) sec. 3, and Art 64, *n*

64 TRUST—

A.—Declaration of—

of, or concerning, any property when made by any writing not being a Will.	The same duty as a Bond (No 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding fifteen rupees

B.—Revocation of—

of, or concerning, any property when made by any instrument other than a Will	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees

See also Settlement (No. 58)

Note.

Cf Act I, 18[illegible] Arts [illegible] and 50, sch I (*Appx D*)

'Trust' includes every *species of express, implied, or constructive* fiduciary ownership Specific Relief Act (I of 1877) sec 3

A trust is an obligation annexed to the ownership of property *and arising out of a confidence reposed in and accepted by the* owner, or declared and accepted by him, for the benefit of another and the owner Indian Trusts Act (II of 1882) sec. 3 See also '*instrument of trust*' [illegible]

Cl A.—The 'declaration of trust' must be a declaration pure and simple If it amounts to a disposition of property, *e g* by way of settlement, it would be chargeable under Art 58 see sec 2 (24), *a*

A 'declaration of trust,' may also operate as a 'conveyance,' and be chargeable as such *Chesterfield Brewery Co v Commissioners* (L R [1899] 2 Q B 7)

Where an instrument is in fact a mortgage although drawn in the *form* of a declaration of trust it is chargeable as a mortgage and not as a trust *Board of Revenue v Orr* (19 Mad L J 613)

Where an agreement was made between certain persons to transfer the *future surplus profits of their respective trades* to a trustee to be held by him on the trusts declared in the agreement, it was held to be a declaration of trust and also an agreement *Ref* (11 Mad 216)

But a document whereby a Hindu widow purported to confer all her property on a kinsman, and imposed upon him the duty of maintaining her from the profits thereof was held to be a gift and not a trust deed · *Ref* (12 Mad 89)

' *As set forth in the instrument* —see sec 27

Cl B —A maximum duty is fixed as in cl A giving at the same time the benefit of a lighter duty to smaller transactions

For the kind of stamp to be used see *App* A

VALUATION—

See APPRAISEMENT (No)

VAKIL—

See ENTRY AS VAKIL (No 30)

65 WARRANT FOR GOODS

that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock warehouse or wharf such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas

Note.

Cf Act I, 1879, Art 61 sch I Cf also 54 & 55 Vic, c 39, s 3, and 33 & 34 Vic c 97, s 8

This is to be distinguished from a delivery order see Art 28, *n*

For the kind of stamp to be used see *App* A

Appendix A

INDIAN STAMP RULES, 1914

NOTIFICATION

No 1140-F, *the 14th August*, 1914

In exercise of the powers conferred by the Indian Stamp Act, 1899 (II of 1899), the Governor General in Council is pleased to make the following rules under the said Act in supersession of all rules now in force under the Act, as published with the following Notifications of the Government of India in the Finance Department, namely —

Notification No 3632 Exc, dated the 29th June 1906,
" 1951-Exc, dated the 16th April 1909,
" 2147 Exc, dated the 28th April 1910,
5057 Exc, dated the 28th September 1910,
6240 F, dated the 30th November 1910,
6564 F, dated the 5th December 1910,
3725 F dated the 20th June 1911,
400 F, dated the 16th August 1912,
511 F dated the 19th August 1912,
515 F, dated the 5th November 1912,
1169 F dated the 6th November 1913
583 F dated the 26th March 1914

RULES UNDER THE INDIAN STAMP ACT, 1899

[*See Sec* 75]

Chapter I

Preliminary

Short title 1 These rules may be called the Indian Stamp Rules, 1914

Definitions 2 In these rules—

(*a*) "The Act" means the Indian Stamp Act, 1899 (II of 1899)

(*b*) "Section" means a section of the Act

(*c*) "Schedule" means a Schedule of the Act

(*d*) "Superintendent of Stamps" means the Superintendent of Stamps Madras, Bombay, Karachi, Rangoon or Nagpur, and includes the Financial Commissioner, Punjab, the Junior Secretary to the Board of Revenue, United Provinces of Agra and Oudh, and any other officer appointed by the Local Government to perform the functions of a Superintendent of Stamps.

Description of Stamp

3 (*1*) Except as otherwise provided by the Act or by these rules —

(*i*) all duties with which any instrument is chargeable shall be paid and such payment shall be indicated on such instrument by means of stamps issued by Government for the purposes of the Act, and

(*ii*) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument, shall not be used for an instrument of any other kind.

(*2*) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely —

(*a*) impressed stamps and

(*b*) adhesive stamps.

Chapter II

Of Impressed Stamps.

Hundis

4 (*1*) Hundis, other than hundis which may be stamped with an adhesive stamp under section 11, shall be written on paper as follows, namely .—

(*a*) A hundi payable otherwise than on demand, but not at more than one year after date or sight, and for an amount not exceeding rupees thirty thousand in value, shall be written on paper on which a stamp of the proper value bearing the word "hundi" has been engraved or embossed.

(*b*) A hundi for an amount exceeding rupees thirty thousand in value, or payable at more than one year after date or sight, shall be written on paper supplied for sale by the Government, to which a label has been affixed by the Controller of Printing, Stationery and Stamps at Calcutta, or a Superintendent of Stamps, and impressed by such officer in the manner prescribed by rule 11.

Appendix A

INDIAN STAMP RULES, 1914

NOTIFICATION

No 1140-F, *the 14th August*, 1914.

In exercise of the powers conferred by the Indian Stamp Act, 1899 (II of 1899), the Governor General in Council is pleased to make the following rules under the said Act in supersession of all rules now in force under the Act, as published with the following Notifications of the Government of India in the Finance Department, namely —

Notification No 3632 Exc, dated the 29th June 1906,
" 1031-Exc, dated the 16th April 1909,
" 2147 Exc, dated the 28th April 1910,
5037 Exc, dated the 28th September 1910,
6240 F, dated the 30th November 1910,
6364 F, dated the 5th December 1910,
3725 F, dated the 20th June 1911,
" 300 F, dated the 16th August 1912;
511 F, dated the 19th August 1912,
513 F, dated the 5th November 1912,
1169 F, dated the 6th November 1913,
583 F dated the 26th March 1914

RULES UNDER THE INDIAN STAMP ACT, 1899

[*See Sec* 75]

CHAPTER I

Preliminary

Short title — 1 These rules may be called the Indian Stamp Rules, 1914

Definitions — 2 In these rules—

(*a*) "The Act" means the Indian Stamp Act, 1899 (II of 1899)

(*b*) "Section" means a section of the Act

(*c*) "Schedule" means a Schedule of the Act

10 Label may be affixed and impressed by the proper officer in the case of any of the following instruments, namely —

Affixing and impressing of labels by proper officer permissible in certain cases

(i) those specified in Appendix II and the counterparts thereof and

(ii) those specified in Appendix III, when written in any European language, and accompanied, if the language is not English, by a translation in English

11 (1) The proper officer shall, upon any instrument specified in Appendix II or III being brought to him before it is executed, and upon application being made to him, affix thereto a label or labels of such value as the application may require and pay for, and impress such label or labels by means of a stamping machine, and also stamp or write on the face of the label or labels the date of impressing the same In the case of instruments written on parchment, the labels shall be further secured by means of metallic eyelets

Mode of affixing and impressing labels

(2) On affixing any label or labels under this rule, the proper officer shall, where the duty amounts to rupees five or upwards, write on the face of the label or labels his initials, and where the duty amounts to rupees twenty or upwards, shall also attach his usual signature to the instrument immediately under the label or labels.

(3) The following officers may discharge the functions of the proper officer under sub rule (2), namely —

(i) Any principal assistant of the proper officer empowered by the Local Government in this behalf;

(ii) In Calcutta, the Deputy Collector and the Superintendent of the Stamp Department of the Collector's office ;

(iii) In Karachi, the Assistant Superintendent of Stamps and

(iv) In Lahore, the head or any other Assistant for the time being in charge of the stamping work in the Financial Commissioner's office

12. (*1*) Intsruments executed out of British India and requiring to be stamped after their receipt in British India (other than instruments which, under section 11 or rule 13, may be stamped with adhesive stamps) shall be stamped with impressed labels

Certain instruments to be stamped with impressed labels

(*2*) Where any such instrument as aforesaid is taken to the Collector under section 18, sub-section (*2*), the Collector, unless he is himself the proper officer, shall send the instrument to the proper officer, remitting the amount of duty paid in respect thereof; and the proper officer shall stamp the instrument in the manner prescribed by rule 11, and return it to the Collector for delivery to the person by whom it was produced

Chapter III

Of Adhesive Stamps

13. The following instruments may be stamped with adhesive stamps, namely —

Use of adhesive stamps on certain instruments

(*a*) Bills of exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed one anna for each part of the set.

(*b*) Transfers of debentures of public companies and associations

(*c*) Copies of maps and plans and printed copies when chargeable with duty under Article 24 of Schedule I

(*d*) Instruments chargeable with duty under Articles 5 (*a*) and (*b*) and 43 of Schedule I

14. When any instrument of transfer of shares in a Company or Association is written on a sheet of paper on which a stamp of the proper value is engraved or embossed, and the value of the stamp so engraved or embossed is subsequently, in consequence of a rise in the value of such shares, found to fall short of the amount of duty chargeable under Article No 62 (*a*) of Schedule I, one or more adhesive stamps bearing the words "Share Transfer" may be used to make up the amount required

Supply of deficient duty on transfer of shares

15. Stamps indicating the duty chargeable on entry as an Advocate, Vakil or Attorney on the roll of any High Court shall be affixed under the superintendence of a gazetted officer of the High Court, who shall obtain the stamp from the Superintendent of Stamps or other officer appointed in this behalf by the Local Government and account to him for it. Such gazetted officer shall, after affixing the stamp, write on the face of it his usual signature with the date thereof.

Enrolment of Advocates, Vakils or Attorneys

16. Except as otherwise provided by these rules, the adhesive stamp or stamps used to denote the duty of one anna shall bear the words "One anna" or "Half anna," as the case may be, and the adhesive stamp used to denote the duty of half an anna shall bear the words "Half anna", and such stamp or stamps may be inscribed for use either for postage or for revenue, or for both postage and revenue.

Adhesive stamp or stamps denoting duty of one anna or half an anna

17. The following instruments when stamped with adhesive stamps shall be stamped with the following descriptions of such stamps, namely:—

Special adhesive stamps to be used in certain cases

(a) Bills-of-exchange, cheques and promissory notes drawn or made out of British India and chargeable with a duty of more than one anna; with stamps bearing the words "Foreign Bill."

(b) Separate instruments of transfer of shares and transfers of debentures of Public Companies and Associations; with stamps bearing the words "Share Transfer."

(c) Entry as an Advocate, Vakil or Attorney on the roll of any High Court, with stamps bearing the word "*Advocate,*" "*Vakil*" or "*Attorney,*" as the case may be.

(d) Notarial acts; with foreign bill stamps bearing the words "Notarial"

(e) Copies of maps or plans and printed copies certified to be true copies, with court-fee stamps.

(*f*) Instruments chargeable with stamp-duty under Article 5 (*a*) and (*b*) or 43 of Schedule I, with stamps bearing the words "Agreement" or "Brokers' Note," respectively.

CHAPTER IV

Miscellaneous

Provision for cases in which improper description of stamp is used

18 When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by endorsement that it is duly stamped

Provided that, if application is made within three months of the execution of the instrument and the Collector is satisfied that the improper description of stamp was used solely on account of the difficulty or inconvenience of procuring one of the proper description, he may remit the further payment of duty prescribed in this rule

Evidence as to circumstances of claim to refund or renewal

19 The Collector may require any person claiming a refund or renewal under Chapter V of the Act, or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen and may also, if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit

Payment of allowances in respect of spoiled or misused stamps or on the renewal of debentures.

20 When an application is made for the payment, under Chapter V of the Act, of an allowance in respect of a spoiled or misused stamp, or on the renewal of a debenture, and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application, then, if the amount of the allowance or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order, the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps or other officer appointed in this behalf by the Local Government for destruction.

21. When the Collector makes a refund under section 55, he shall cancel the original debentures by writing on or across it the word "Cancelled" and his usual signature with the date thereof.

Mode of cancelling original debenture on refund under section 55

22. On the conviction of any offender under the Act, the Collector may grant to any person who appear to him to have contributed thereto a reward not exceeding such sum as the Local Government may fix in this behalf

Rewards

APPENDIX I

"Proper Officers" within the meaning of rule 9

1. The Superintendent of Stamps
2. The Superintendent of Stamps (Political Resident), Aden
3. The Collector of Calcutta
4. The Collector, or, in the absence of the Collector from headquarters, the Treasury Officer, of each of the following Districts, namely —
   (1) Godavari
   (2) Tinnevelly
   (3) Malabar
   (4) South Canara
   (5) Chittagong
   (6) Kamrup
5. The Treasury Officers, Moulmein, Akyab and Bassein
6. The Deputy Tahsildar at Tuticorin, in respect of any instrument for which the value of the labels required does not exceed one rupee.

APPENDIX II.

List of instruments referred to in rule 10 (1).

		No of Article in Schedule I.
1	Administration bond	2
2.	Affidavits	4
3	Appointments made in execution of a power ..	7
4.	Articles of Association of a Company ...	10

21. When the Collector makes a refund under section 55, he shall cancel the original debentures by writing on or across it the word "Cancelled" and his usual signature with the date thereof

Mode of cancelling original debenture on refund under section 55

22. On the conviction of any offender under the Act, the Collector may grant to any person who appears to him to have contributed thereto a reward not exceeding such sum as the Local Government may fix in this behalf

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APPENDIX II.

List of instruments referred to in rule 10 (1).

	No of Article in Schedule I
1 Administration bond	2
2. Affidavits	4
3. Appointments made in execution of a power .	7
4. Articles of Association of a Company ...	10

		No of Article in Schedule I.
3	Awards ...	12
4	Bills-of exchange paybale otherwise than on demand and drawn in British India	13 (*b*) and (*c*)
5	Bonds ...	15, 16, 26, 34, 56 & 57
6	Certificates of sale	18
7	Composition deeds	22
8	Conveyances	23
9	Instruments imposing a further charge on mortgaged property	32
10	Instruments of apprenticeship	9
11	Instruments of co partnership	46A
12	Instruments of dissolution of partnership .	46B
13	Instruments of exchange	31
14	Instruments of gift	33
15	Instruments of partition	45
16	Leases	35
17	Letters of license	38
18	Mortgage-deeds	40
19	Powers of-attorney	48
20	Reconveyances of mortgaged property ...	54
21.	Releases	55
22	Settlements	58
23.	Transfers of the description mentioned in Article 62, clauses (*c*), (*d*) and (*e*) of Schedule I ...	62, (*c*), (*d*), & (*e*)

		No. of Article in Schedule I.
5	Articles of clerkship	11
6.	Bills-of lading ..	14
7.	Charter parties ...	20
8	Declarations of trust ..	64A
9	Instruments evidencing an agreement relating to (1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or (2) the pawn or pledge or hypothecation of moveable property	6
10	Leases partly printed or lithographed in an Oriental language, when the written matter does not exceed one fourth of the printed matter .	35
11.	Memoranda of Association of Companies —	39
12	Mortgages of crops	41
13	Notes of protest by Masters of Ships ...	44
14	Policies of insurance	47
15	Revocations of trust	64B
16	Share warrants issued by a Company in accordance with section 43 of the Indian Companies Act, 1913 (VI of 1913)	59
17	Warrants for goods	65
18	Note or memorandum when the duty payable exceeds two annas ...	43[5]

APPENDIX III

List of instruments referred to in rule 10 (ii)

1. Agreements or memoranda of agreements which, in the opinion of the proper officer, cannot conveniently be written on sheets of paper on which the stamps are engraved or embossed ... 5

2. Instruments engrossed on parchment and written in the English style which, in the opinion of such officer, cannot conveniently be written on sheets of paper on which the stamps are engraved or embossed ... ...

5 Instrument executed for the purpose of securing the repayment of a loan made, or to be made under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884), including an instrument whereby a landlord binds himself to consent to the transfer, in the event of default in such repayment, of any land, or interest in land, on the security of which any such loan is made to his tenant

6 Receipt given by a person for advances exceeding Rs. 20 received by him from the Government under the Agriculturists' Loans Act, 1884 (XII of 1884)

In Bombay

7 Agreement respecting the occupancy of land, whether surveyed or not, and the payment of the land revenue therefor, executed under the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879), or *any rules made under that Act*

8 Lease granted under rule 31 of the Rules published by the Government of Bombay under the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879)

9 Lease granted by the Government under rules made under the Indian Forest Act 1878 (VII of 1878), section 31, or purporting to be so granted, of land situated in a protected forest in any of the following villages in the Akola taluka of the District of Ahmednagar in the Presidency of Bombay, namely —Ambit, Ghatghar, Kumshed, Lohali, Kotul, Pachnai, Panjare, Samrad, Shinganwadi and Uddavne.

10 Agreement or memorandum of an agreement, whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the rights so relinquished —*Duty reduced to four annas*

11 Instrument executed by an Inamdar in the Bombay Presidency whereby he undertakes to suspend or remit rent due from a tenant or tenants in consideration of a suspension or remission granted by the Government in respect of his own *judi* or quit rent

[Instrument executed by a landlord in the Bombay Presidency whereby he agrees to remit rent due from a tenant in consideration of a remission granted by the Government in respect of his own rent —No 2191 *Exc*, *29th April*, 1910]

In Burma

12 Certified copy of a map showing the holdings of cultivators in Burma when furnished to such a cultivator

30 Power of attorney executed in favour of a lambardar or khattadar by an opium cultivator, who does not attend personally to receive an advance or to enter into a contract for the cultivation of the poppy for the Government

31 *Instrument of the nature of a mortgage-deed* when executed by the surety of a middleman (lambardar or khattadar) taking an advance for the cultivation of the poppy for the Government

32 Security bond or mortgage-deed for the fulfilment of any contract deed for the supply of weighment articles in use in the Bihar and Benares Opium Agencies

33 Contract deed for the supply of weighment articles in use in the Bihar and Benares Opium Agencies

34 Agreement or memorandum of agreement made by a raiyat for, or in respect of, the cultivation of the hemp plant in the district of Rajshahi

35. Agreement or memorandum of agreement for the cultivation of the hemp plant made by a cultivator in the Madras Presidency.

[Counterpart agreements executed under the Bombay Abkari Act 1878—No 563 F, 25*th Nov*, 1912]

C—FOREST DEPARTMENT

36 Agreement and security bond required to be executed, under the rules to regulate the training and appointments in the Subordinate Forest Service, by a student and his surety previous to his entry into the Imperial Forest School, Dehra Dun, or the Burma Forest *School, Tharrawaddy* [or the *Madras Forest College*, Coimbatore, —No 22 F, 8*th May*, 1912]

37 Instrument in the nature of a conveyance by the Government of standing trees in a Government forest

D—MEDICAL DEPARTMENT

38 Security bond taken under the authority of the Government from a medical student of the Apothecary, Assistant Surgeon, or Hospital Assistant class, and his surety, or from the surety of such a student

[38A. Agreement and Security bonds required by a student and his sureties previous to his entry into the *Madras Veterinary* College—No 444 F, 9*th Oct*, 1912]

E.—POST OFFICE AND TELEGRAPH DEPARTMENT

39. Letter which a person depositing money in a Post Office Savings Bank, as security to the Government or a local authority for the due execution of an office or for the fulfilment of a contract

or for any other purpose, is required to address to the Postmaster in charge of the Post Office Savings Bank agreeing to special conditions with respect to the application and withdrawal of the money deposited and the payment of interest accruing due thereon

40 Receipt given by or on behalf of, a depositor in a Post Office Savings Bank for a sum of money withdrawn from any such Bank

41 Receipt endorsed by the payee on a Postal Money Order

42 Receipt given by the addressee for a deposit exceeding twenty rupees made for the payment of a reply to a telegraphic message

F.—RAILWAYS AND INLAND STEAMER COMPANIES

43 Agreement made with a Railway Company or Administration or an Inland Steamer Company for the conveyance of goods.

44 Agreement or indemnity bond, given to a Railway authority or an Inland Steamer Company by a passenger permitted to travel without payment of fare, indemnifying such authority or Company from any claim for damages in case of accident or injury

45 Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a consignee (when the Railway receipt or bill of lading is not produced) in respect of the delivery of articles carried at half parcels rate or at goods rates, namely, fresh fish, fruits, vegetables, bazar baskets, bread, meat, ice, and other perishable articles

46 Agreement made with a Railway Company or Administration which purports to limit the responsibility of the Company or Administration as declared by the Indian Railways Act, 1890 (IX of 1890), section 72, sub section (1), and is in a form approved by the Governor-General in Council under sub section (2) of that section.

47 Receipt or bill of lading issued by a Railway Company or Administration or an Inland Steamer Company for the fare for the conveyance of passengers or goods, or both, or animals, or given to such Company or Administration or Inland Steamer Company for the refund of an overcharge made in respect of such fare.

48 Receipt given by, or on behalf of, a depositor in the State Railway Provident Institution or in the East Indian Railway Savings Bank for a sum of money withdrawn from any such Institution or Bank

49 Debenture bond of the loan of Rs 20,00,000 raised by the Government of His Highness the Maharaja of Mysore for the construction of a line of railway from Bangalore to Tiptoor, where the said bond is negotiated in British India.

G.—GOVERNMENT OFFICERS AND CONTRACTORS.

50 Agreement paper passed by a contractor of the Supply and

or for any other purpose, is required to address to the Postmaster in charge of the Post Office Savings Bank agreeing to special conditions with respect to the application and withdrawal of the money deposited and the payment of interest accruing due thereon

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G.—GOVERNMENT OFFICERS AND CONTRACTORS.

50 Agreement paper passed by a contractor of the Supply and

amount secured, if such loan or debt is repayable on demand or more than three months from the date of the instrument, and to half that amount, if such loan or debt is repayable not more than three months from the date of the instrument.—No 5614 *Ex.*, *6th O.t.*, 1905.]

81 Instrument executed in the areas mentioned in the schedule hereto attached in respect of which the stamp-duty with which it is chargeable under the stamp law for the time being in force in the said areas has been paid in accordance with the said law

SCHEDULE OF AREAS.

(1.) Agency territories in Baluchistan

(2.) Abu and Anadra including the road leading from the Abu Sanitarium to Abu Road Railway Station and to the Bazar at Kharari.

(3.) The Cantonments of Mhow, Neemuch, Nowgong (including the Civil Lines), and Sehore in the Central India Agency and of Baroda and Deesa

(4.) The Indore Residency Bazars

(5.) Railway lands within the limits of the Central India and Rajputana Agencies over which the Governor-General in Council exercises jurisdiction

(6.) The areas in the Hyderabad State in which the Governor-General in Council exercises jurisdiction through the Resident at Hyderabad

(7.) Berar (8.) The Civil and Military Station of Bangalore.

[(9.) Railway lands in the Mysore State over which the Governor-General in Council exercises jurisdiction

(10.) Railway lands in the Baroda State and in States in the Political control of the Government of Bombay over which jurisdiction has been ceded to the British Government and to which the provisions of the Indian Stamp Act, 1899, have been applied.

(11.) Railway lands in Jammu and Kashmir and in States in the Punjab over which the Governor-General in Council exercises jurisdiction.—*No 246 F. 28th Feb. 1913.*]

[82 Policy of sea insurance—The duty chargeable under Article 47 A (1) (ii), Schedule I of the said Act, on a policy of sea-insurance shall be reduced to one anna, if drawn singly, and to half an anna for each part, if drawn in duplicate, in respect of every full sum of one thousand five hundred rupees and also any fractional part of one thousand five hundred rupees insured by the policy, with effect from the 1st April 1910.—*No 5799, 26th Nov., 1909.*]

CONVERSION OF FOREIGN CURRENCIES

No 1281 S. R., *17th March*, 1899 —In exercise of the power conferred by section 20, sub section (2), of the Indian Stamp Act 1899 (II of 1899), and of all other powers in this behalf, and in supersession of the notification of the Government of India in the Department of Finance and Commerce, No 737 S R., dated the 17th Feb, 1899, the Governor General in Council is pleased to prescribe the following rates of exchange for the conversion of the currencies hereinafter specified respectively into the currency of British India for the purposes of calculating ***ad valorem*** duty on instruments chargeable therewith —

Currency	Sum	*Equivalent in currency of British India.*
British	£ 1 sterling	Rs. 15; but in the case of Bills of Exchange (Article No 13, Schedule 1) Rs 10 only
French . .	1 franc .	3/5 of a Rupee, *i.e.*, Fcs. 25= Rs 15.
German . .	1 mark .	3/4 of a Rupee, *i e*, Mks 20= Rs 15.
United States or Canadian .	1 dollar ...	Rs 3 0 0
Chinese . . .	1 tael ...	Rs 2 0 0
British (Asiatic Possessions) . .	1 dollar* ..	Rs 1 8 0
Mexican	1 " * ..	Rs 1 8 0
Japanese... .	1 yen ...	Rs 1 8 0
Persian	1 kran ...	Rs. 0 4 0

* That is the "British Dollar" and the "Mexican Dollar" which are in current use in the Straits Settlements and elsewhere

Appendix C.

PROCEEDINGS IN COUNCIL

ACT II OF 1899

STATEMENT OF OBJECTS AND REASONS

"Since the Stamp Act of 1879 was passed the stamp law has been amended by ten different enactments The present Bill proposes to repeal and re-enact in a consolidated form the whole of these enactments It also proposes to introduce certain amendments where the working of the stamp law had disclosed defects. Alterations are printed in italics, and the material amendments which it is proposed to introduce are referred to in the notes *on clauses given below. For facility of reference a comparative* table is appended to this statement, showing how each section of the Indian Stamp Act, 1879, has been dealt with in the present Bill

Clause 2 (2) and (3)—The definitions of "bill-of-exchange" and "bill-of-exchange payable on demand" are taken from the English Stamp Act, 1891 (54 & 55 Vic. c. 39) It will be noted that (as is the case in England) they include many instruments which could not be classed as "bills-of-exchange" within the definition given by the Negotiable Instruments Act, 1881, but which for stamp purposes ought to fall within the same category.

(7) The definition of "cheque" has been altered to bring in into accord with the definition given by the Negotiable Instruments Act, 1881.

(11) The definition of "duly stamped" has been amended The former definition seems scarcely applicable where the instrument was first executed abroad and afterwards stamped in British India

(14) A definition of "instrument" has been added.

(19) The definition of "policy of insurance" has been amended so as to make *it cover policies of every description*

(21) The definition of "power-of-attorney" has been amended so as to make it clear that it relates only to powers of-attorney

CONVERSION OF FOREIGN CURRENCIES

No 1281 S. R., *17th March*, 1899.—In exercise of the power conferred by section 20, sub-section (2), of the Indian Stamp Act 1899 (II of 1899), and of all other powers in this behalf, and in supersession of the notification of the Government of India in the Department of Finance and Commerce, No 787 S R., dated the 17th Feb, 1899, the Governor General in Council is pleased to prescribe the following rates of exchange for the conversion of the currencies hereinafter specified respectively into the currency of British India for the purposes of calculating *ad valorem* duty on instruments chargeable therewith —

Currency	Sum	Equivalent in currency of British India.
British	£ 1 sterling	Rs. 15, but in the case of Bills of Exchange (Article No. 13, Schedule 1) Rs 10 only.
French .	1 franc .	3/5 of a Rupee, *i.e*, Fcs. 25= Rs 15
German	1 mark	3/4 of a Rupee, *i e*, Mks. 20= Rs 15
United States or Canadian	1 dollar ...	Rs. 3 0 0
Chinese . .	1 tael .	Rs. 2 0 0
British (Asiatic Possessions) .	1 dollar* ..	Rs. 1 8 0
Mexican	1 " * ...	Rs. 1 8 0
Japanese. . .	1 yen . .	Rs. 1 8 0
Persian	1 kran ..	Rs. 0 4 0

* That is the "British Dollar" and the "Mexican Dollar" which are in current use in the Straits Settlements and elsewhere

Clause 35.—A proviso has been added which prevents the exclusion of receipts from being admitted as evidence against the person by whose fault they are unstamped.

Clause 37.—This clause has been inserted to provide for the case where by inadvertence a stamp of improper description has been used.

Clause 39.—Power is given to the Collector to act, in cases where he thinks fit to do so, without application made.

Clause 44.—A paragraph has been added to this clause to provide that, where a party to a suit has been obliged to pay stamp duty through the default of the other party, the duty so paid may be recovered as costs and need not be made the subject of a separate suit

Clause 45.—This clause has been amended so as to give the Chief Controlling Revenue-authority power to remit as well as to refund penalties It further provides for the refund of any excess duty which may have been paid. The effect of the clause will be to give an informal right of appeal from the Collector to the Chief Revenue-authority

Clause 48.—This clause provides a simple procedure for the recovery of duties and penalties

Clause 49.—The drafting of this clause has been altered so as to make its provisions clearer and to bring it more nearly into accord with the corresponding provisions of the English Stamp Duties Management Act, 1891 (54 & 55 Vic., c. 38)

Clause 50.—This clause is a redraft of the proviso to section 51 of the Act of 1879.

Clause 51.—This clause gives a new power to make allowances for stamp paper on printed forms used by incorporated companies where such forms have ceased to be required

Clause 54.—A proviso has been added to this clause to make special provision for the case of licensed vendors of stamps.

Clause 55.—This clause is new, and is intended to give facilities to Companies in respect of renewals of debentures.

Clause 56.—A paragraph has been added to make it clear that in all cases a Collector is subject to the Chief Controlling Revenue-authority.

Clause 61.—This clause has been amended so as to give to Appellate Courts revisionary powers in respect of decisions of criminal as well as of civil and revenue courts in the cases referred to

and does not include all contracts creating the relationship of principal and agent

(22) The definition of "promissory-note" is taken from the English Stamp Act, 1891

(23) In the definition of "receipt" the word "advertisement" is left out, as the machinery of the Act is not applicable to advertisements acknowledging receipt of money.

The definitions of "vessel," "writing" and "schedule" have been omitted as unnecessary, being now provided for in the General Clauses Act, 1897

Clause 3—The general exemption on behalf of Government contained in Schedule II of the Act of 1879 has now been inserted in the body of the Act as a proviso to this clause.

Clause 4—A proviso has been added to this clause to make it clear that the option given to the parties to elect which instrument shall be considered as the principal instrument is not to be used for the purpose of evading stamp duty.

Clause 8—A penalty clause taken from the English Act has been added

Clause 9—A paragraph has been added to this clause to provide for the composition or consolidation of duties

Clause 12—The present law leaves it doubtful how adhesive stamps ought to be cancelled A paragraph has been added to indicate a proper manner for the cancellation of such stamps

Clause 20—Section 19 of the Act of 1879 has been omitted as the fall of the exchange value of the rupee has rendered it inapplicable The present clause puts all foreign currency on the same footing, and the second paragraph provides a simple machinery for fixing the rate of exchange for the purpose of stamp duty.

Clause 24.—An Explanation and Illustration have been added to this clause to remove doubts as to its construction.

Clause 25—The drafting of this clause has been altered so as to make it applicable to annuities commencing at an indefinite future time.

Clause 33—A paragraph has been added to this clause to provide for the interpretation of the terms "*public offices*" and "*persons in charge of public offices.*"

Clause 34.—This clause has been added, because under the present law an audit officer of public accounts, before whom an unstamped receipt is produced, must impound the instrument, and has no power to require the substitution of a duly stamped receipt.

Clause 35.—A proviso has been added which prevents the exclusion of receipts from being admitted as evidence against the person by whose fault they are unstamped

Clause 37.—This clause has been inserted to provide for the case where by inadvertence a stamp of improper description has been used.

Clause 39.—Power is given to the Collector to act, in cases where he thinks fit to do so, without application made

Clause 44.—A paragraph has been added to this clause to provide that, where a party to a suit has been obliged to pay stamp duty through the default of the other party, the duty so paid may be recovered as costs and need not be made the subject of a separate suit

Clause 45.—This clause has been amended so as to give the Chief Controlling Revenue-authority power to remit as well as to refund penalties It further provides for the refund of any excess duty which may have been paid. The effect of the clause will be to give an informal right of appeal from the Collector to the Chief Revenue-authority

Clause 48.—This clause provides a simple procedure for the recovery of duties and penalties

Clause 49.—The drafting of this clause has been altered so as to make its provisions clearer and to bring it more nearly into accord with the corresponding provisions of the English Stamp Duties Management Act, 1891 (54 & 55 Vic, c. 38)

Clause 50.—This clause is a redraft of the proviso to section 51 of the Act of 1879

Clause 51.—This clause gives a new power to make allowances for stamp paper on printed forms used by incorporated companies where such forms have ceased to be required

Clause 54.—A proviso has been added to this clause to make special provision for the case of licensed vendors of stamps

Clause 55.—This clause is new, and is intended to give facilities to Companies in respect of renewals of debentures.

Clause 56.—A paragraph has been added to make it clear that in all cases a Collector is subject to the Chief Controlling Revenue-authority.

Clause 61.—This clause has been amended so as to give to Appellate Courts revisionary powers in respect of decisions of criminal as well as of civil and revenue courts in the cases referred to

Clause 64—A clause has been added to cover acts which may not fall within the scope of the preceding clauses, but which nevertheless are done with the intent to defraud the Government of duty

Clause 69—This clause has been amended so as to make it clear that any one, whether licensed or not, can sell one-anna adhesive stamps A corresponding provision has been made in clause 74

Clause 73—This clause intended to give Collectors power to trace unduly stamped documents is taken from the English Act.

General—The arrangement of articles is more strictly alphabetical The exemptions are printed under the Articles to which they relate, instead of being contained in a separate schedule, and exemptions of a general character, which have from time to time been made by notification are now embodied in the schedule itself A few exemptions of documents executed in connexion with the business of public departments, have been removed from the Act and will be notified among the exemptions made by executive authority

Art 6—Agreement to mortgage—A mortgage by deposit of title deeds, commonly called an equitable mortgage, operates as an agreement to mortgage and is better described under that head

Art 13—Bills of Exchange—The exemption from stamp duty of Bills-of-Exchange payable on demand for less than twenty rupees has been omitted There is no such exemption in England. As regards bills payable otherwise than on demand no alteration has been made in the duty, but the table of duties has been worked out at greater length for convenience of reference

Art. 15—Bond—A similar table has been worked out with reference to bonds

Art 17—Instrument of Cancellation—This article is new.

Art. 21—Cheque.—The exemption from stamp duty of cheques under twenty rupees has been omitted. There is no such exemption in England.

Art 23—Conveyance.—The duty has not been altered, but the table of duties has been worked out at greater length for convenience of reference.

Art. 24—Copy or Extract—Provision has been made for stamping duplicate receipts when signed or attested.

Art. 27—Debenture—This article is new; debentures at present come under the general conditions of Bonds, but it has been considered more convenient to deal with them under a separate article.

Art. 32—*Instrument of Further Charge.*—This article has been altered so as to impose the higher duty in cases in which possession is given in pursuance of the instrument of further charge.

Art 35—A provision for a proper duty on perpetual leases has been added

Art. 41—*Mortgage-deed* —An addition has been made to this article, taken from the English Stamp Act 1891, to provide for cases of mortgage by further assurance An exemption has been added to make it clear that ordinary pawn transactions are not liable to stamp duty The explanation regarding possession is intended to prevent evasion of the higher duty on mortgages with possession.

Art 41—*Mortgage of Crop* —This is a new article, but it represents an existing notification reducing the duty in the case of mortgage of crops

Art 47—*Policies of Insurance.*—The drafting of this article has been altered to make its provisions clearer

Art. 48—*Power-of-attorney* —It has been found that sales and mortgages are sometimes effected through the medium of powers-of-attorney. Provision has been made that in this case they should pay the same duty as conveyances A slight extension is also made of clause (*a*) of the article

Art 57—The limitation of the duty is made to extend to the case of a surety executing a bond to secure due execution of a contract.

Art. 58—*Settlement.*—The revocation of a settlement is now specially charged with the same duty as the revocation of any other trust A provision is made which has the effect of exempting from section 27 of the Act a class of documents in which it is contrary to religious duty to express the value of the thing conveyed.

Art. 59—*Share Warrants.*—This Article is taken from section 35 of the Indian Companies Act, 1882, It more appropriately comes under this Act. The duty is expressed more simply, and is the same in amount.

Art 62—*Transfer.*—A special provision has been made in this article for the transfer of debentures which are marketable securities. The article has no application to debentures payable to bearer "

REPORT OF THE SELECT COMMITTEE.

"We, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to Stamps was referred, have considered the Bill and have now the honour to submit this our Report with the Bill as amended by us annexed thereto

Cl 2 (3)—"*Bill of-Exchange payable on demand.*—We have omitted the concluding words of clause (*b*) of this definition as likely to give rise to difficulty in India, and we have provided expressly that a letter of credit is for stamp purposes to be treated as a bill payable on demand

(10) *Conveyance*—We have altered this definition so as to make it include all conveyances *inter vivos* which are not specifically provided for in Schedule I, and then to meet the difficulty in I L R 7 Cal 21 where it was held that the instrument in question was neither a "conveyance" nor a "settlement" nor an "instrument of partition,' but an "agreement" for the transfer of property

(13) We have added a definition of "impressed stamp" so as to make it clear that the term includes both a stamp impressed by the Collector and also a stamp or embossed stamp paper.

(15) *Instrument of partition*—We have extended this definition so as to include an award by an arbitrator directing a partition

(22) *Promissory-note*—We have re-drafted this definition in order to make its meaning clearer

Cl. 3—We have added to the general exemption in this clause an exemption of sales, mortgages and dispositions of registered ships We consider that the Indian law in this respect should conform to the law of the United Kingdom as stated in section 721 of the Merchant Shipping Act, 1894 (57 & 58 Vic, c. 60), and in the second general exemption at the end of the first schedule of the Stamp Act, 1891 (54 & 55 Vic, c. 39).

Cl. 12.—We have added some words to sub-section (3) to make it clear that the mode there indicated for cancelling an adhesive stamp is directory only, and not intended to exclude other effective modes of cancellation.

Cl. 24.—We have added a proviso to the *explanation* making a concession in a case where the mortgagee is himself the purchaser, that is to say, where he already has an interest in the property and is only purchasing the remaining interest of the mortgagor.

Cl. 26—We have added a proviso to cover the ca[illegible] by accident an instrument is insufficiently stamped [illegible] the proper duty is subsequently paid under sections 41 and 42

Cl. 29—We have omitted the reference to art[illegible] (re-conveyance of mortgaged property) from clause (*a*) and pro-vided for the payment of duty on re-conveyances, as in the case of conveyances by the grantee We have also omitted cl[illegible] (*b*) relating to copies of receipts, as we do not propose to levy stamp duty on such instruments We have omitted the proviso *and illustration*, as a *concession of* duty in respect to partitions by the amended schedule

Cl 35—We have provided for the case of contracts which are *to* be gathered from correspondence when there is no formal instrument to be stamped, by enacting that it is sufficient if any one of the letters forming part of the correspondence bears the *proper stamp* We *have* also altered sub section (*b*) so as to cover all cases in which a receipt is sought to be put in evidence against the person who ought to have stamped it Lastly, we have added words to sub-section (*c*) to provide for a possible case of hardship A Collector acting under section 32 or any other similar provision might certify an amount as being the proper duty which the Court considered less than the proper duty. We think that in such a case the instrument should be admissible in evidence as the party tendering it is not to blame

Cl. 37.—We have altered the drafting of this clause *to* make it clear that the right to have an instrument stamped with a stamp of improper description duly stamped is dependent on rules made by the Governor-General in Council

Cl. 39—*As the law stands, the Collector* cannot charge in any case a less penalty than five rupees. When the stamp is very small, *e.g.* one or two annas, ten times the value of the stamp might be less than five rupees, and we think that *in such* cases it will be sufficient to recover ten times the amount of stamp.

Cl 40—As the law at present stands, the Collector may either impose a penalty of five rupees or a penalty of ten times the amount of the proper duty, provided that such amount does not fall short of five rupees We think that the Collector should have a discretion to take ten times the amount of the proper duty even though that may not amount to five rupees, *e.g.*, if the amount of duty were two annas, he might be allowed to impose a penalty of Re. 1-4 *We have added sub section (3), as it was represented to us that* inconvenience has been caused by requiring the Collector to return the instrument to the person who originally tendered it instead of to the impounding officer.

Cl 41 We have added further words to sub-section (3) If a case comes into Court and the Court does not think fit to include the amount of the duty or penalty in the costs, we think that no other proceedings to recover it should be taken

Cl 45 We have omitted the new sub section (1), as it has been represented to us that the power conferred by it is likely to be abused It would give rise to continual applications for postponement of civil suits, and the Controlling Authority would be flooded with fruitless applications for remission

Cl 49 —We have inserted a new sub-section (7) because a doubt has arisen whether the existing sub-section (6) covers the case of a second instrument being executed solely because the stamp on the original instrument was of insufficient value.

Cl 54 —Vendors of stamps buy stamps under discount. In the case of a refund, they are of course only entitled to receive the amount actually paid, and not the full value of the stamps

Cl. 70 —We have provided that when an offence is compounded, the agreed composition may be recovered as if it were a penalty under section 48

Cl 75 —We have inserted a limit of five hundred rupees fine as the maximum penalty to be imposed for breach of any rule.

Schedule I - No 1 *Acknowledgement*—We have reverted to the old duty of one anna for all acknowledgments, and have added words to make it clear that the provision relates only to mere acknowledgments and does not include acknowledgments con taining in addition any promise or agreement

No. 6 *Agreement to mortgage* —We have amended this article and reverted to the old law by confining it to instruments of equitable mortgage and excluding agreements to execute a future mortgage

No. 12. *Award*—We have excluded awards directing partitions, as they are specially provided for as partitions.

No. 24 *Copy or Extract.*—We have omitted the proposed duty on original or attested copies of receipts

No. 27. *Debentures*—We have added words to the *explanation* to show that interest coupons attached to debentures are free from tax, and that the amount payable under them is not to be taken into consideration in taxing the debentures

No. 45. *Partition* We have inserted provisions reducing the duty in the case of partitions. The Bill as originally drawn imposed in the case of a partition a duty calculated on the value of the whole property partitioned, but gave the Revenue-authority or Civil Court

power to remit the duty upon such portion as remained undivided We have altered the duty so as to make it leviable only on the value of the share or shares divided off, and we have further based the levy of the duty on the assumption that at whichever partner's instance a partition takes place it is the smaller shares that are separated from the larger, and not the larger that is separated from the smaller It seems to us that the operation is the same, whether it is the larger or the smaller shareholder who is the initiator and the taxation on the transaction should not be different in the two cases The following illustrations will show how the alteration in the law proposed by us will operate, if adopted —

Four equal shareholders, each having a four anna share, agree to partition The duty is levied on 12 annas of the value of the whole property

Of three shareholders, having respectively shares of one half, one-third and one sixth, two apply to have their shares partitioned off The duty is levied on half the value of the property

One shareholder having two-thirds of a property, obtains separation from the remainder who hold jointly one third, and who desire to continue to hold their share jointly The duty is levied on one-third of the value of the property

No. 47 *Policy of Insurance* – We have provided a reduced duty for insurance against accident or sickness which is at present chargeable on the same footing as life insurance

No. 48 *Power-of Attorney* —We have limited clause (*f*) of this article to the case of powers authorizing sales of immoveable property.

No. 49 *Promissory-note* —We have restored the old law under which promissory-notes payable on demand can be stamped with a one-anna stamp

Nos. 58 *and* 64 —We have reduced the duty in the case of the revocation of small settlements, also in the case of small trusts and revocations of trust

THE AMENDING ACTS.

ACT XV OF 1904

STATEMENT OF OBJECTS AND REASONS

The attention of the Government of India has been directed to the ruling of the Calcutta High Court in the case of the *Queen Empress v. Debendra Krishna Mitter* (1900), I. L. R. 27 Cal. 587, to the effect that, unless the whole advance given under an equitable mortgage be made at the time that the instrument of hypothecation is executed, the stamp must be that of an ordinary mortgage. The decision imposes a much heavier duty on equitable mortgages than appears to have been intended, for it follows from it that the higher duty chargeable on an ordinary mortgage is leviable whenever it is sought to secure by deposit of title-deeds future advances on an existing account. Such a duty is, in view of the temporary nature of transactions of the kind indicated, excessive, and the fact that it is leviable must tend to retard the development of the system of cash credits, which has hitherto proved of great assistance to trade. It is, therefore, proposed—see clause 6 of the Bill—to amend Article No. 6 of the first schedule to the Indian Stamp Act, 1899 (II of 1899), so as to relieve these instruments from the higher duty, and to place them all on the same footing, whether their execution is or is not simultaneous with the advances secured by them, and it is at the same time suggested—see clause 3—to follow section 23, read with section 86 (2), of the English Stamp Act of 1891 (54 & 55 Vic. c. 39), and to levy a fixed fee of eight annas only when the security deposited by way of equitable mortgage is marketable.

In the same connection notice has been called to various defects, doubts and anomalies in the law. *First*, no provision is at present made for the case where an equitable mortgage is executed to secure the repayment of a loan after more than one year, and the agreement in such a case is consequently liable to the duty of eight annas only under Article No. 5 of the schedule. It is proposed to amend Article No. 6 so as to impose the same stamp as that required on a document securing repayment within a year. *Secondly*, there is now no specific provision as to the duty leviable upon an instrument evidencing an equitable mortgage where the advance secured is repayable on demand, and such instruments are chargeable either with the same duty as agreements or with the duty leviable on ordinary mortgages, according as the securities are deposited before or at the time of execution. It is proposed to extend the amendment of the Article so as to treat such instruments in the same manner as instruments securing repayments after more

than three months *Thirdly*, there appears to be some doubt as to the applicability of the Article to pawns and pledges, and it is proposed to amplify it so as expressly to include such transactions as well as hypothecations of securities

Finally, the opportunity has been taken to amend the law in another direction Under section 26 of the Act, where the value of the subject-matter of an instrument is unknown or indeterminate, the contracting parties may use their discretion as to the value of the stamp to be affixed to the instrument, but no sum can be recovered under it in excess of the amount covered by the duty actually paid An exception is, however, made in the case of mining leases in which a royalty or share of the produce is reserved as rent The value of the share or royalty is necessarily indeterminate in the majority of such cases, and it is therefore, provided that, if the lease be stamped on an assumed valuation of Rs 20,000 a year, the sum actually due under the lease may be recovered whatever the amount may be. This provision is unsuitable in the case of mining leases granted by the Government, for the natural tendency of revenue-officers is to safeguard the interests of the Government by valuing the royalty at the figure just referred to in every case The stamp duty ordinarily payable on this valuation is Rs 200, and this constitutes an unduly heavy burden in the case of small and unproductive mines It is proposed, therefore, by clause 4 of the Bill, to expand the section so as to provide that, where a mining lease is granted by the Government, the Collector may estimate the amount of royalty which he considers likely to be payable, and it will be sufficient if the lease is stamped in accordance with his estimate The further amendments proposed by clause 5 and sub-clauses (2), (3) and (4) of clause 6 of the Bill are purely consequential and require no explanation"

REPORT OF SELECT COMMITTEE

"Clause 2 of the Bill as introduced proposed the amendment of the definition of "mortgage-deed" as contained in section 2 (17) of the Act with the object of limiting it to immoveable property on the analogy of the definition in section 58 of the Transfer of Property Act, 1882 Though no objection has been taken to this proposal in the criticisms received, we have come to the conclusion, after carefully considering the provisions of the Act, that it would be unwise to alter the existing definition which includes property of all kinds. There may be transactions relating to moveable property only which amount to assignments of such property by way of mortgage (as in the cases reported in I. L. R 8 Mad 104 and 21 Cal. 241, or in the common case of a bill of sale) and which ought to bear the same stamp as other mortgages Such transactions

would, however, be left entirely unprovided for if the definition of mortgage deed were limited so as to exclude moveable property, for they are outside the scope of article 6 and are not provided for by any other article We have therefore omitted this clause from our amended Bill

Clause 2 of our revised Bill is new It proposes the insertion in section 2 of the Act of a new definition of "marketable security" on the lines of that contained in section 122 of the Stamp Act, 1891 (54 & 55 Vic c 39), the need for which, in connection more especially with the new section 23A, has been urged in various quarters. It further suggests an addition to the existing definition of "settlement" in the same section, with the object of preventing the evasion of the stamp duty imposed on settlements which is at present effected by the simple expedient of first making an oral disposition of the property to be settled and then recording the terms of the disposition in a declaration of trust in which the settlor and the trustees join. Such an instrument is only chargeable with a stamp-duty of Rs 15 under article 64 (Declaration of Trust) instead of with the heavier duty imposed by article 58 (Settlements) The proposed addition to the definition will have the effect of requiring such instruments in future to be stamped as settlements

Cl 3 - It has been pointed out that the new section 23A proposed by this clause, which was borrowed almost entirely from section 23 of the Stamp Act 1891, does not describe the securities generally pledged in India, and, after considering the various suggestions for the revision of the clause contained in the papers, we think that the best course will be to make the new provision cover the deposit of all marketable securities, as proposed in our revised clause

Cl. 6.--The slight amendment suggested by this new clause in section 40 of the Act only embodies in the law certain executive instructions under which the Collector is at present empowered to levy an amount less than the maximum penalty prescribed if he thinks this sufficient in the circumstances of the case.

Cl. 7.—In accordance with a suggestion in the papers we have thought it desirable, by the addition of a few words to section 56 of the Act, to provide for the revision of the Collector's decision as to the amount at which any royalty or share should be estimated for the purpose of stamp-duty in the case of a lease of a mine under the new proviso to section 26 proposed by clause 4 of the Bill.

Cl 8, *sub-cl.* (1) —In so far as the new article 6 of Schedule I of the Act, which was proposed in the Bill as introduced, relates to the deposit of title-deeds, the alterations made by us, which are mainly taken from the definition of "equitable mortgage" in section 86 of the Stamp Act, 1891, are merely designed to define more clearly the nature of the transactions intended to be covered. With

regard, however to the portion of the article which relates to "the hypothecation pawn or pledge of moveable property," we have adopted in our revised draft the view advanced in Donogh's *Indian Stamp Law*, Second Edition, page 161, and endorsed by the Calcutta High Court in the case reported in I L R 21 Cal 241 (at page 244), that the term "hypothecation" is used in the article as synonymous with pawn or pledge, and that the article is intended to relate only to cases in which property is actually giving in pledge We have accordingly restricted the article in terms to these latter transactions, omitting the reference to hypothecation, thus making it clear that all transactions by which moveable property is simply appropriated by way of security for the discharge of a debt or engagement without parting with its possession (as for example, bills of sale of stock-in trade), are outside the scope of the article, and consequently are liable to the duty on mortgage-deeds as being instruments "whereby one person transfers or creates to, or in favour of, another a right over, or in respect of, specified property.

Sub-cl 5 —The reduction of the stamp-duty on certain mortgages of crops (article 41) from four annas to two annas, which is proposed by this sub-clause, only embodies in the law the effect of an existing notification under the Act making a similar reduction, The other alterations proposed by us in the bill as introduced are merely formal or are not of sufficient importance to require explanation "

20th Oct 1904

ACT V OF 1906

STATEMENT OF OBJECTS AND REASONS

"IT has been represented to the Government of India by the Chambers of Commerce of Bengal, Madras, Bombay, Karachi and Rangoon and by various Fire Insurance Associations that the rates of duty on fire insurance policies prescribed by Article No 47 (B) of Schedule I to the Indian Stamp Act, 1899 (II of 1899), are unequal and in certain cases unduly high, and it is suggested by these bodies that the rates should be reduced to a uniform all-round rate of one anna per policy issued or re issued. The Government of India have considered this proposal in consultation with Local Governments and Administrations, and although they are not prepared to grant the large reduction asked for, they are of opinion that the present rates of duty on fire insurance policies are unnecessarily high. It is accordingly proposed in the Bill to substitute for the present rates, which vary according to the amount and period of the

would, however, be left entirely unprovided for if the definition of mortgage deed were limited so as to exclude moveable property, for they are outside the scope of article 6 and are not provided for by any other article. We have therefore omitted this clause from our amended Bill.

Clause 2 of our revised Bill is new. It proposes the insertion in section 2 of the Act of a new definition of "marketable security" on the lines of that contained in section 122 of the *Stamp Act, 1891* (54 & 55 Vic. c. 39), the need for which, in connection more especially with the new section 23A, has been urged in various quarters. It further suggests an addition to the existing definition of "settlement" in the same section, with the object of preventing the evasion of the stamp duty imposed on settlements which is at present effected by the simple expedient of first making an oral disposition of the property to be settled and then recording the terms of the disposition in a declaration of trust in which the settlor and the trustees join. Such an instrument is only chargeable with a stamp-duty of Rs 15 under article 64 (Declaration of Trust) instead of with the heavier duty imposed by article 58 (Settlements). The proposed addition to the definition will have the effect of requiring such instruments in future to be stamped as settlements.

Cl. 3. It has been pointed out that the new section 23A proposed by this clause, which was borrowed almost entirely from section 23 of the Stamp Act, 1891, does not describe the securities generally pledged in India, and, after considering the various suggestions for the revision of the clause contained in the papers, we think that the best course will be to make the new provision cover the deposit of all marketable securities, as proposed in our revised clause.

Cl. 6.—The slight amendment suggested by this new clause in section 40 of the Act only embodies in the law certain executive instructions under which the Collector is at present empowered to levy an amount less than the maximum penalty prescribed if he thinks this sufficient in the circumstances of the case.

Cl. 7.—In accordance with a suggestion in the papers we have thought it desirable, by the addition of a few words to section 56 of the Act, to provide for the revision of the Collector's decision as to the amount at which any royalty or share should be estimated for the purpose of stamp-duty in the case of a lease of a mine under the new proviso to section 26 proposed by clause 4 of the Bill.

Cl. 8, *sub-cl.* (1).—In so far as the new article 6 of Schedule I of the Act, which was proposed in the Bill as introduced, relates to the deposit of title-deeds, the alterations made by us, which are mainly taken from the definition of "equitable mortgage" in section 86 of the Stamp Act, 1891, are merely designed to define more clearly the nature of the transactions intended to be covered. *With*

policy, a uniform duty of four annas in respect of every original fire insurance policy when the sum insured is less than Rs. 5,000, and of eight annas in other cases, and the same duties on every premium payment, in addition to the usual stamp duty of one anna on receipts. The Government of India are of opinion that under the arrangement proposed it is desirable to impose the liability to stamp the policies and receipts upon the companies which issue them This condition has not been objected to by the various Fire Insurance Associations who have been consulted by the Local Governments.

Secondly, the Bill provides for the legalisation of an existing but at present unauthorised practice of dividing the stamp-duty, payable on Marine Insurance policies between copies drawn in duplicate.

The Bill also contains certain other minor amendments of the Stamp Act, 1899 These amendments (to which effect has already been given by means of executive orders) relate (*a*) to the admission of private banking firms to the benefit allowed by section 51 of the Act in regard to the refund of the value of unused stamped papers, (*b*) to a general exemption from duty of copies of, or extracts from, certificates relating to births, baptisms, marriages and deaths, and (*c*) to the reduction of the duty on mortgages of crops when the loan is repayable in more than twelve but not more than eighteen months

18th January, 1906

REPORT OF SELECT COMMITTEE.

"In accordance with a representation made by the Calcutta Fire Insurance Agents Association we have suggested certain amendments with the object of imposing the whole duty on an original policy of fire-insurance, and not half on the policy and half on first premium receipt, as in the Bill as introduced

We understand that it often happens that the original policy is simply handed over to the insured in exchange for cash, and that no premium receipt is given for the first premium, in which case Government would lose half the duty on the original policy under the provisions of the Bill as introduced We have therefore amended the new division B of Art. 47 of Schedule i of the Act, so as to increase the duties on original policies to eight annas *and one* rupee respectively, and to reduce the duty on receipts for payment of premium on renewals to one half of those amounts, while we have altered the new paragraph which it is proposed to add to section 30 of the Act, so as to exempt persons *from the obligation to give a* stamped receipt for the first payment of premium.

It has been pointed out that the exemption from Art 24, Schedule I of the Act, proposed by the Bill does not include register of burials. We have rectified this omission, and have at the same time made the exemption cover entries in the old registers of "Namings" and "Dedications" which are referred to in section 35 of the Births, Deaths, and Marriages Registration Act, 1886

As we find that elsewhere in Schedule I of the Act where the rate of duty is graduated with reference to the sum of money involved in a transaction, the rate is made to depend on whether that sum does or does not *exceed* a certain specified amount, we have for the sake of uniformity and to prevent misunderstanding suggested the substitution of the words 'does not exceed' for the words 'is less than' in the new division B (1) of Art 47 of that schedule

20th February 1906

ACT VI OF 1910

STATEMENT OF OBJECTS AND REASONS

This Bill proposes to amend the Indian Stamp Act, 1899, in order to increase the duties which are leviable on certain instruments under that Act The measure is purely a fiscal one, and the classes of documents which have been selected for enhanced taxation are among those on which the present rates of duty fall with comparative lightness

The proposals are—

First—To double the present duties chargeable on—

(*a*) the issue of debentures by local authority

(*b*) debentures generally ,

(*c*) share warrants to bearer issued under the Indian Companies Act, 1882 , and

(*d*) transfer of shares and debentures ,

Second—To raise the duty on an agreement or memorandum of agreement for the sale of Government securities, shares or bills of exchange, from a fixed sum of one anna to a graduated sum, varying with the amount of the consideration for the sale, but subject to a maximum charge of Rs. 10 ; and

Third.—To increase by roughly one half the duty on bills of exchange and promissory notes

25th February, 1910

REPORT OF SELECT COMMITTEE

"We the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Stamp Act, 1899, was referred, have considered the Bill, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto

Appendix D

STAMP-DUTIES, BENGAL PRESIDENCY.

(*See p* 1—7.)

REG. VI OF 1797. *In force* { *from* 10*th April*, 1797. *up to* 30*th Sept*, 1800,

All Original Deeds of Contracts, Bargains, Sales, Mortgages, Releases, Assignments, and other **Conveyances** in writing or **instruments,** excepting original deeds relating to marriage settlements, which are not required to be written on stamp paper (and the original obligations for the payment of money, hereafter specified in sec. 21 which are to be written on the paper therein directed) and

All Copies of the deeds and instruments above described, including copies of deeds relating to marriage settlements, and the aforesaid obligations for the payment of money, which shall be prepared by the Cauzy of any place, or his officers, or any Mufty, and which are to be attested with his or their seals or signatures, shall be written on stamp paper of certain sizes and descriptions with which the Cauzies and Mufties will be furnished. The parties at whose application such original deeds or instruments, or the copies of them, may be prepared and attested, shall pay to the Cauzy or the Mufty, previous to his delivering the documents, at the rate of *one sicca rupee, or eight annas or four annas, or two annas,* according as may be specified in the stamp affixed to the paper used, for every roll or sheet, or part of a roll or sheet, so stamped which may be expended in preparing such original deeds or instruments, or the copies of them

	Law Papers ·
The respective stamps shall have an inscription to the following effect, in the Persian and *Bengali languages and characters and in the* Hindustanee languages and Nagree character.—	" One Rupee " or "eight annas " or "four annas" or " two annas "

1800—1811 ject to a duty of *four annas*, *eight annas*, *one rupee*; *or two rupees*: according to the size of the paper which may be used for such original deeds or instruments or the copies of them.

The several stamps shall have an inscription in the Persian and Bengal languages and characters, and in the Hindustanee language and Nagree character to the following effect,—

Law papers	"Two rupees."
or	"One rupee"
or	"Eight annas"
or	"Four annas."

Exceptions.—All contracts or engagements of whatever description which may be entered into for the provision of any part of the Company's investment, or for the manufacture of salt or opium as well as generally all deeds to which Government may be one of the contracting parties are exempted and the originals and copies of such are also exempted unless otherwise provided for by any special Regulation

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REG. XIII OF 1806
REG. VIII OF 1807

In force from 16th Apr / 10th July 1807, *to 1st Jan.*, 1810.

Attempts having been made to imitate the stamps established by Regulations VI and X of 1797, VI and VII of 1800, XI of 1801, XL and XLII of 1803 and to issue and dispose of forged stamp papers, it is necessary for the security of the public revenue derived from stamp duties to adopt further rules for the purpose of more effectually preventing the fabrication and use of forged stamp paper

After the receipt of this Regulation, the Superintendent of Stamps at Calcutta, appointed under secs 12 and 13, Reg. VI, 1797, and sec. 12 Reg XLIII, 1803, or such officer acting under the Superintendent of Stamps as may be specially authorized by Government for this purpose, previously to issuing any stamp paper shall endorse his written official signature upon the back of each paper, and shall specify or cause to be specified thereon the date on which it shall be so authenticated

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REG. VII OF 1809.

In force { *from 1st Jan*, 1810 / *up to 1st May*, 1814 }

Such parts of secs. 2, 10 and 11, Reg. XIII, 1806, and sec. 4, Reg VIII of 1807, as require all stamp paper to be endorsed with the written official signature of the Superintendent of Stamps or other authorized officer under him are hereby rescinded (4th Aug 1809): Provided, however, that such rescission shall not be construed to prevent the sale of any stamp paper already issued or which may have already received the authentication of the Superintendent or of his covenanted assistants until the 1st of January, 1810.

Existing stamp-duties were maintained. New stamps were to be used after 1st January, 1810, for all instruments, bearing one inscription, *viz*:— "Law et Cætera Papers."

REG. XII OF 1810 *In force* { *from 4th May, 1810.* *up to 1st May, 1814.*

1810—1814

Whereas by sec. 2, Reg VII, 1809, the rule which had been previously in force, requiring the signature of the Superintendent or his officers to be affixed on all stamp paper, was rescinded, with a provision that such rescission should not be construed to prevent the sale of any stamp paper which might have already been so authenticated until the 1st Jan, 1810, and whereas any limitation as to time with respect to the sale of stamp paper so authenticated is unnecessary, the following rules have been enacted, to be immediately in force

All stamp paper which may still remain in store, authenticated according to the rules existing previously to the enactment of Reg VII, 1809, shall be admitted and filed in the Courts of Justice, in the same manner as if those papers had not received such authentication.

REG. I OF 1814 *In force* { *from 1st May, 1814,* *up to 1st Feb, 1815.*

Every **Deed of Gift, Sale, Devise,** or other **Transfer** of property, real or personal; Every **Lease, Deed of Mortgage** or other limited assignment of land; Every **Deed of Contract** (declared by Reg XXVI of 1814, s. 26 to include Kabeennamahs or Deeds of Marriage Settlement), **Partnership, Agreement, Security** or engagement, which may be executed within the provinces subject to the Presidency of Fort William in Bengal, shall be written on paper (or some other material) impressed with the Government stamp, the value of which shall be regulated as follows —

If the Instrument be for a sum not exceeding Rs 16, or if the value of the property transferred or otherwise affected by it shall not exceed Rs. 16, the Deed shall be executed on stamp paper of the value of | One anna.

If above Rs. 16	and	not exceeding Rs	64	Two annas.
„ 64	„	„	125	Four annas
„ 125	„	„	250	Eight annas.
„ 250	„	„	500	One rupee
„ 500	„	„	1,000	Two rupees
„ 1,000	„	„	2,000	Four rupees
„ 2,000	„	„	5,000	Eight rupees
„ 5,000	„	„	10,000	Sixteen rupees.
„ 10,000	„	„	20,000	Thirty two rupees
„ 20,000	„	„	50,000	Fifty rupees.
„ 50,000	„	„	1,00,000	One hundred rupees.
„ 1,00,000	...	—	—	One hundred and fifty rupees.

Every **Lease** and its **Counterpart** (*pattah* and *cabooleat*), or other engagement contracted between landlord and tenant;

Every Receipt (*dakhilah*) or other Acknowledgment for the payment of rent is required to be written on paper bearing the prescribed stamp, supposing that such Lease, Receipt, or other Instrument relate to lands held exempt from the payment of revenue to Government, but instruments

1829 of the correspondent descriptions, which have relation to lands subject to the payment of revenue to Government, need not be written on stamp paper

No stamp to be considered valid until the paper, parchment, leaf of the *taur* tree (*taur-pattah*) or other material on which the stamp had been impressed had received the prescribed counter-stamp at the general treasury.

Persons desirous of having any instrument executed on vellum, parchment, or any other material instead of paper, or *taur-pattah* were entitled to have the same stamped on paying the established duty.

Authenticated Copies of documents required for use or reference	Eight annas

REG. XXVI OF 1814

In force { *from 1st Feb*, 1815, *up to 30th Dec.*, 1824

Existing Duties (*see* Reg. 1, 1814) were maintained, and the following rule added —

All Authenticated Copies of the documents specified in sec 11, Reg 1 of 1814, which may be prepared as legal vouchers by a Cauzy, Mufty, or other authorized person, shall be written on stamp paper. Any copies not written on such paper will not be admissible in evidence under sec, 9 Reg, 1, 1814.	*According to the rates prescribed for the originals of such deeds.*
Deeds of Contract, Partnership, Agreement, and engagements of whatever nature which may not relate to a specific sum of money, or to a specific value, so as to make it practicable to apply to them the table of rates stated in sec 11, Reg, 1, 1814 are required to be written on stamp paper of the value of	One rupee

Under the penalty declared in sec, 9, Reg. 1, 1814,

Doubts having arisen whether Kabeennamahs, or Deeds of Marriage Settlement, are to be written on stamp paper according to the table of rates contained in sec. 11, Reg. I, 1814, it is hereby declared that the provisions of that section were and are intended to be applicable to Deeds of Marriage Settlement, in common with other deeds of contract for a specific amount.

REG. XVI OF 1824.

In force { *from 31st Dec*, 1824, *up to 16th June*, 1829

Agreement or any **Minute or Memorandum of an Agreement**, concerning any matter or thing of the value of 500 rupees or upwards, not otherwise charged in this Schedule, nor expressly exempted from all stamp duty, whether *the same* be only evidence of a contract, or obligatory upon the party.	Rs. As. 8 0

Assignments, if not of the nature of Conveyances and Settlements not specially exempted	Rs As 8 0
Bills of Sale An absolute Bill of Sale	*See* Conveyances.
Bill of Sale as a security being the principal or only Deed whereby the property is conveyed	*See* Mortgage.
Bills of Sale as a security being merely a collateral one with some Deed or Instrument that has paid the *ad valorem* duty prescribed for Conveyances ...	Rs. As. 8 0
Bonds taken as collateral security with some Deed or Instrument that has paid the *ad valorem* duty prescribed for Conveyances or Money Bonds or as security for the performance of any other contract, covenant, or agreement, not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand	Rs. As. 8 0
Contracts or Deeds if not otherwise charged nor exempted from duty ...	8 0
Co-Partnership, Deeds of	8 0

Conveyances whether grant, disposition, assignment, transfer renunciation, or of any other kind or description whatsoever upon the sale of any lands, tenements, rents, annuities, or other properties, real or personal, heritable or moveable or of any right, title, interest or claims in, to, out of, or upon any lands, houses rents, annuities, or other property, that is to say, for or in respect of the principal or only Deed Instrument, or Writing whereby the property sold shall be conveyed to, or otherwise vested in the purchaser or purchasers, or to some other person by his or their direction,

Where the purchase or consideration money therein expressed or denoted		Rs As.
shall not exceed ... Rs	50	0 8
Above Rs 50 and not exceeding	100	1 0
" 100 " "	200	2 0
" 200 " "	500	4 0
" 500 " "	1,000	8 0
" 1,000 " "	2,000	12 0
" 2,000 " "	3,000	16 0
" 3,000 " "	5,000	20 0
" 5,000 " "	8,000	32 0
" 8,000 " "	12,000	40 0
" 12,000 " "	20,000	50 0
" 20,000 " "	30,000	64 0
" 30,000 " "	50,000	80 0
" 50,000 " "	1,00,000	100 0
" 1,00,000 " "	2,00,000	150 0
And for every further lakh of Rupees beyond two lakhs ...		100 0

Note.—Where of several Deeds, Instruments or Writings a doubt shall arise which is the principal, it shall be lawful for the parties to determine

1829 for themselves which shall be so deemed, and to engross the same on paper parchment, vellum or the like stamped for the prescribed *ad valorem* duty, provided, however, that in all cases where there are more Deeds than one, all other Deeds than the principal shall be charged with a stamp-duty of 8 Rupees, and all such Deeds shall specify by their contents which other is the principal Deed by which the Conveyance has been effected, certifying that it is executed in the manner and on material stamped as required.

Exemptions.

All Grants, Leases, Sales, or the like, wherein Government in its political or territorial capacity is a party.

Note.—*This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decree of Court in which cases the purchaser shall be required to pay the prescribed duty along with the purchase money, and shall receive from the officer conducting the sale a Deed of Sale executed on paper impressed with a corresponding stamp.*

Copies. Copy in any manner authenticated or declared to be a true copy or made for the purpose of being given in evidence as a true copy of any Bond, Deed, or Instrument of Agreement, Contract, Conveyance, or of any Deed or Instrument whatsoever chargeable with a stamp duty.

Where such copy shall be made for the security or use of any person being a party to, or taking any benefit or interest immediately under such agreement, contract, bond, deed or other instrument	The same duty as for the original instrument

	Rs.	As.
Where such copy shall be made for the security or use of any person not being a party to or taking any benefit or interest immediately under such agreement contract, bond, deed or other instrument .	8	0
Likewise any copy authenticated, or made as aforesaid of any schedule, receipt or other matter put or endorsed on or annexed to any such agreement, contract, bond, deed, or other instrument aforesaid	8	0

Exemptions.

Copies made for the private use only of any person having the custody of the original instrument, or of his or her attorney or solicitor.

Copies of papers, which public officers are directed by any general Regulation to make, require, or furnish, not specially declared chargeable with stamp-duty.

Note.—*Copies of records, accounts or other documents required by individuals from the public offices, not especially charged with or exempted from duty, shall be charged in the manner and subject to the conditions prescribed in sec. 19, Reg. I, 1814, and other provisions of the existing Regulations.*

1824—1

	Rs. As.
Deeds of any kind not otherwise particularized in this schedule	8 0
Exchanges. Any Deed, whereby any real property shall be conveyed or surrendered in exchange for other property—	
If no sum of money shall be paid, or agreed to be paid, for equality of exchange	8 0
If any sum of money be paid, or agreed to be paid, for equality of exchange	The same *ad valorem* duty as for a Conveyance for such sum.
Leases. Any lease made in perpetuity or for a term of years or period determinable with one or more lives, or otherwise contingent in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent	The same duty as for a Conveyance, or sale for a sum of the amount of such consideration

Any Lease of Lands, Houses, or other real property at a yearly rent, without any payment of any sum of money, by way of fine or premium—

Where the yearly rent shall exceed Rs 12, but shall

				Rs	As.
not exceed			Rs 24	0	8
Exceeding Rs.	24	but not exceeding	50	0	12
,,	50	,, ,,	100	1	0
,,	100	,, ,,	250	2	0
,,	*250*	,, ,,	*500*	4	0
,,	500	,, ,,	1,000	8	0
,,	1,000	,, ,,	2,000	12	0
,,	2,000	,, ,,	4,000	16	0
,,	4,000	,, ,,	6,000	20	0
,,	*6,000*	,, ,,	*10,000*	32	0
,,	10,000	,, ,,	50,000	64	0
,,	50,000	... —	...	80	0

Any Lease of Lands, Houses, or other real property stipulating for a yearly rent, and granted in consideration of a fine or premium	Shall be charged with both *ad valorem* duties above provided.
	Rs. As
The **Counterpart** of any **Lease** charged with a *duty exceeding eight rupees* shall likewise be executed on paper vellum or parchment bearing a stamp of ...	4 0
Letters or Powers-of-Attorney, or Commission or Factory in the nature thereof.	
Powers to perform any one special, that is to say, particular act, or the acts connected with one particular suit, case, or transaction, or sundry acts to be done after a manner specified in the instrument ..	2 0
General powers — ... —	[illegible] 0

-1829 for themselves which shall be so deemed, and to engross the same on paper parchment, vellum or the like stamped for the prescribed *ad valorem* duty; provided, however, that in all cases where there are more Deeds than one, all other Deeds than the principal shall be charged with a stamp-duty of 8 Rupees, and all such Deeds shall specify by their contents which other is the principal Deed by which the Conveyance has been effected, certifying that it is executed in the manner and on material stamped as required.

Exemptions.

All Grants, Leases, Sales, or the like, wherein Government in its political or territorial capacity is a party.

Note—*This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of Court in which cases the purchaser shall be required to pay the prescribed duty along with the purchase money, and shall receive from the officer conducting the sale a Deed of Sale executed on paper impressed with a corresponding stamp*

Copies. Copy in any manner authenticated or declared to be a true copy or made for the purpose of being given in evidence as a true copy of any Bond, Deed, or Instrument of Agreement, Contract, Conveyance, or of any Deed or Instrument whatsoever chargeable with a stamp duty.

Where such copy shall be made for the security or use of any person being a party to, or taking any benefit or interest immediately under such agreement, contract, bond, deed or other instrument	The same duty as for the original instrument

	Rs. As
Where such copy shall be made for the security or use of any person not being a party to or taking any benefit or interest immediately under such agreement, contract, bond, deed or other instrument	8 0
Likewise any copy authenticated, or made as aforesaid of any schedule, receipt or other matter put or endorsed on or annexed to any such agreement, contract, bond, deed, or other instrument aforesaid	8 0

Exemptions.

Copies made for the private use only of any person having the custody of the original instrument, or of his or her attorney or solicitor.

Copies of papers, which public officers are directed by any general Regulation to make, require, or furnish, not specially declared chargeable with stamp-duty.

Note.—*Copies of records, accounts or other documents required by individuals from the public offices, not especially charged with or exempted from duty, shall be charged in the manner and subject to the conditions prescribed in sec. 19,* Reg. I, 1814, *and other provisions of the existing Regulations*

1824—

	Rs. As.
Deeds of any kind not otherwise particularized in this schedule	8 0
Exchanges. Any Deed, whereby any real property shall be conveyed or surrendered in exchange for other property—	
If no sum of money shall be paid, or agreed to be paid, for equality of exchange	8 0
If any sum of money be paid, or agreed to be paid, for equality of exchange	The same *ad valorem* duty as for a Conveyance for such sum.
Leases. Any lease made in perpetuity or for a term of years or period determinable with one or more lives, or otherwise contingent in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent	The same duty as for a Conveyance, or sale for a sum of the amount of such consideration

Any Lease of Lands, Houses, or other real property at a yearly rent, without any payment of any sum of money, by way of fine or premium—

			Rs.	As.
Where the yearly rent shall exceed Rs 12, but shall not exceed		Rs 24	0	8
Exceeding Rs. 24	but not exceeding	50	0	12
" 50	" "	100	1	0
" 100	" "	250	2	0
" 250	" "	500	4	0
" 500	" "	1,000	8	0
" 1 000	" "	2,000	12	0
" 2,000	" "	4,000	16	0
" 4,000	" "	6,000	20	0
" 6,000	" "	10,000	32	0
" 10,000	" "	50,000	64	0
" 50,000	... —	...	80	0

Any Lease of Lands, Houses, or other real property stipulating for a yearly rent, and granted in consideration of a fine or premium	Shall be charged with both *ad valorem* duties above provided.
	Rs As
The **Counterpart** of any **Lease** charged with a duty exceeding eight rupees shall likewise be executed on paper vellum or parchment bearing a stamp of ...	4 0
Letters or Powers-of-Attorney, or Commission or Factory in the nature thereof.	
Powers to perform any one special, that is to say, particular act, or the acts connected with one particular suit, case, or transaction, or sundry acts to be done after a manner specified in the instrument ...	2 0
General powers — ... —	4 0

-1829 **Mortgages.** Any Deed of Mortgage or conditional sale, with or without possession, given of any lands, estate, or property, real or personal, intended as a security for money due or to be lent thereupon also any deed or contract accompanied with a deposit of title-deeds to any property where the same may be made as a security for payment of money due or lent at the time	Shall be charged after the same manner and at the same rates as if in lieu of such deed of mortgage or the like a bond had been taken for the same due or lent at the time
Deeds of Mortgage, or the like given as security *for the transfer of Government* Securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the *total* amount assured or of the *bonâ fide* value.
Deeds of mortgage given for the security of annuities for an indefinite period, such as life annuities and the like.	Shall be charged at the rate of 10 times the annual payment

	Rs. As.
Where the total amount secured by such mortgage is unlimited	150 0
Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum.	At the rate of such limitation.
Note —Where a bond may have been already taken for the amount secured or where from other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty, thereupon the same being specified in the body of the deed of Mortgage ...	Rs As. 8 0
Likewise in case of there being more deeds than one required to execute the mortgage, in the manner desired by the parties the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction	8 0

Exemptions

Mortgages to which Government in its political or territorial capacity, or the officers of Government acting for the Government in matters relating to its political or territorial concerns, are parties

	Rs As.
Partitions. Any Deed of Partition of real or personal property adjusted by mutual agreement amongst co heirs, co-ners or the like	8 0

any sum or sums of money shall be paid or agreed
equality of partition,
Deed stipulating for such payment shall be
valorem duty prescribed for a Conveyance or
sum
of estates made by collectors of land-revenue whether on
parties or any of them, or in execution of a decree of Court
he portion allotted to each sharer shall exceed Rs. Foo, a stamp

duty of the above amount shall be charged on each copy of the paper of 1824 partition or other title-deed which may be taken out by any of the parties after the partition shall have been approved by the Revenue Board.

Where the portion of each sharer shall not exceed Rs. 800, the following rate of duty shall be chargeable		Rs As.
If the value of the portion shall not exceed	Rs. 100	0 8
More than Rs 100, but not exceeding ...	,, 200	1 0
,, 200 ,, ,,	,, 400	2 0
,, 400 ,, ,, ...	,, 600	4 0
,, 600 ,, ,, ...	,, 800	6 0

Policy of Assurance or Insurance or other Instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

		Rs. As.
Where the sum insured shall not exceed	Rs. 5,000	4 0
Exceeding Rs. 5,000, but not exceeding	,, 10,000	8 0
,, 10,000 ,, ,, ...	,, 20,000	12 0
,, 20,000 ,, ,,	,, 50,000	16 0
,, 50,000	... ...	20 0

Settlements. Any Deed or Instrument whereby any sum or sums of money, or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of, any person or persons in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled or agreed to be settled; or in cases in which the value shall be indeterminate at the rate of Rs. 100.
Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate.	Chargeable as a Deed of Settlement.

Exemptions.

Wills, Testaments, and the like, together with Deeds merely declaratory of trust pursuant to any previous Settlements, Deed, or Will.

General Exemptions.

Deeds, Instruments, *and Writings of any kind in which Government or any Board, Commission, Court, or public officer, may, in a public capacity, be a party, save and except Deeds, Instruments and Writings relating to matters of, or belonging to, the Commercial Department, shall not be chargeable with any stamp-duty.*

REG. XVIII OF 1825. *In force from 25th August, 1825*

This Regulation extended generally the operation of the Bengal Regulations to the territory acquired by Treaty from the Dutch on the 17th March 1824, *viz.*, the settlement of Chinsurah and the factories and lands held by the Dutch at Calcapore, Dacca, Fulta, Patna, and Balasore It also provided for

-1829

Mortgages. Any Deed of Mortgage or conditional sale, with or without possession, given of any lands, estate, or property, real or personal, intended as a security for money due or to be lent thereupon also any deed or contract accompanied with a deposit of title-deeds to any property where the same may be made as a security for payment of money due or lent at the time	Shall be charged after the same manner and at the same rates as if in lieu of such deed of mortgage or the like a bond had been taken for the same due or lent at the time
Deeds of Mortgage, or the like given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured or of the *bonâ fide* value.
Deeds of mortgage given for the security of annuities for an indefinite period, such as life annuities and the like.	Shall be charged at the rate of 10 times the annual payment

	Rs.	As.
Where the total amount secured by such mortgage is unlimited	150	0
Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum	At the rate of such limitation.	
Note — Where a bond may have been already taken for the amount secured or where from other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty, thereupon the same being specified in the body of the Deed of Mortgage ...	8	0
Likewise in case of there being more deeds than one required to execute the mortgage, *in the manner desired by the parties* the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction	8	0

Exemptions.

Mortgages to which Government in its political or territorial capacity, or the officers of Government acting for the Government in matters relating to its political or territorial concerns, are parties.

	Rs.	As.
Partitions. Any Deed of Partition of real or personal property adjusted by mutual agreement amongst co heirs, co-[owners] or the like	8	0

[I]f any sum or sums of money shall be paid or agreed [for] equality of partition,

[the] Deed stipulating for such payment shall be [charged with the ad] *valorem* duty prescribed for a Conveyance or [of the] sum

[Partitions] of estates made by collectors of land-revenue whether on [application of the] parties or any of them, or in execution of a decree of Court [when the p]ortion allotted to each sharer shall exceed Rs. 500, a stamp

duty of the above amount shall be charged on each copy of the paper of partition or other title deed which may be taken out by any of the parties after the partition shall have been approved by the Revenue Board. 1824

Where the portion of each sharer shall not exceed Rs. 600, the following rate of duty shall be chargeable			Rs.	As.
If the value of the portion shall not exceed		Rs. 100	0	8
More than Rs 100, but not exceeding	—	„ 200	1	0
„ 200 „ „		„ 400	2	0
„ 400 „ „	—	„ 600	4	0
„ 600 „ „	—	„ 800	6	0

Policy of Assurance or Insurance or other Instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

		Rs.	As.
Where the sum insured shall not exceed	Rs. 5,000	4	0
Exceeding Rs. 5,000, but not exceeding	„ 10,000	8	0
„ 10,000 „ „ —	„ 20,000	12	0
„ 20,000 „ „	„ 50,000	16	0
„ 50,000 .. — .	... ...	20	0

Settlements Any Deed or Instrument whereby any sum or sums of money, or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of, any person or persons in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled or agreed to be settled; or in cases in which the value shall be indeterminate at the rate of Rs 100.
Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate.	Chargeable as a Deed of Settlement.

Exemptions.

Wills, Testaments, and the like, together with Deeds merely declaratory of trust pursuant to any previous Settlements, Deed, or Will.

General Exemptions.

stamp-duty

REG XVIII OF 1825. *In force from 25th August, 1825*

This Regulation extended generally the operation of the Bengal Regulations to the territory acquired by Treaty from the Dutch on the 17th March 1824, viz, the settlement of Chinsurah and the factories and lands held by the Dutch at Calcapore, Dacca, Fulta, Patna, and Balasore. It also provided for

24—1829

Mortgages. Any Deed of Mortgage or conditional sale, with or without possession, given of any lands, estate, or property, real or personal, intended as a security for money due or to be lent thereupon : also any deed or contract accompanied with a deposit of title-deeds to any property where the same may be made as a security for payment of money due or lent at the time	Shall be charged after the same manner and at the same rates as if in lieu of such deed of mortgage or the like a bond had been taken for the same due or lent at the time
Deeds of Mortgage, or the like given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured or of the *bond fide* value.
Deeds of mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of 10 times the annual payment

	Rs.	As.
Where the total amount secured by such mortgage is unlimited	150	0
Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum.	At the rate of such limitation.	
	Rs.	As.
Note.—Where a bond may have been already taken for the amount secured or where from other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty, thereupon the same being specified in the body of the Deed of Mortgage ...	8	0
Likewise in case of there being more deeds than one required to execute the mortgage, in the manner desired by the parties the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction	8	0

Exemptions

Mortgages to which Government in its political or territorial capacity, or the officers of Government acting for the Government in matters relating to its political or territorial concerns, are parties.

	Rs.	As.
Partitions. Any Deed of Partition of real or personal property adjusted by mutual agreement amongst co-heirs, co-sharers or the like	8	0

any sum or sums of money shall be paid or agreed equality of partition,

Deed stipulating for such payment shall be *valorem* duty prescribed for a Conveyance or sum

of estates made by collectors of land revenue whether on parties or any of them, or in execution of a decree of Court e portion allotted to each sharer shall exceed Rs. 500, a stamp

duty of the above amount shall be charged on each copy of the paper of partition or other title-deed which may be taken out by any of the parties after the partition shall have been approved by the Revenue Board. 1824

Where the portion of each sharer shall not exceed Rs. 800, the following rate of duty shall be chargeable

		Rs. As.
If the value of the portion shall not exceed	Rs. 100	0 8
More than Rs. 100, but not exceeding	" 200	1 0
" 200 " "	" 400	2 0
" 400 " "	" 600	4 0
" 600 " "	" 800	6 0

Policy of Assurance or Insurance or other Instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

		Rs. As.
Where the sum insured shall not exceed	Rs. 5,000	4 0
Exceeding Rs. 5,000, but not exceeding	" 10,000	8 0
" 10,000 " "	" 20,000	12 0
" 20,000 " "	" 50,000	16 0
" 50,000 ...	... ...	20 0

Settlements. Any Deed or Instrument whereby any sum or sums of money, or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of, any person or persons in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled or agreed to be settled, or in cases in which the value shall be indeterminate at the rate of Rs. 100.
Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate.	Chargeable as a Deed of Settlement.

Exemptions.

Wills, Testaments, and the like, together with Deeds merely declaratory of trust pursuant to any previous Settlements, Deed, or Will.

General Exemptions.

[illegible]

stamp-duty.

REG. XVIII OF 1825.

In force from 25th August, 1825.

This Regulation extended generally the operation of the Bengal Regu- [illegible] from the Dutch on the 17th March [illegible] lands held by the [illegible] also provided for

—1829

Mortgages. Any Deed of Mortgage or conditional sale, with or without possession, given of any lands, estate, or property, real or personal, intended as a security for money due or to be lent thereupon; also any deed or contract accompanied with a deposit of title-deeds to any property where the same may be made as a security for payment of money due or lent at the time.	Shall be charged after the same manner and at the same rates as if in lieu of such deed of mortgage or the like a bond had been taken for the same due or lent at the time
Deeds of Mortgage, or the like given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured or of the *bonâ fide* value.
Deeds of mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of 10 times the annual payment

	Rs.	As.
Where the total amount secured by such mortgage is unlimited	150	0
Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum.	At the rate of such limitation.	
Note.—Where a bond may have been already taken for the amount secured or where from other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty, thereupon the same being specified in the body of the Deed of Mortgage ...	8	0
Likewise in case of there being more deeds than one required to execute the mortgage, in the manner desired by the parties the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction	8	0

Exemptions

Mortgages to which Government in its political or territorial capacity, or the officers of Government acting for the Government in matters relating to its political or territorial concerns, are parties

	Rs.	As.
Partitions. Any Deed of Partition of real or personal property adjusted by mutual agreement amongst co-heirs, co-[o]wners or the like	8	0

[I]f any sum or sums of money shall be paid or agreed [for] equality of partition.

[The] Deed stipulating for such payment shall be [ad] *valorem* duty prescribed for a Conveyance or [the] sum

[Partitions] of estates made by collectors of land revenue whether on [application of the] parties or any of them, or in execution of a decree of Court [where] the portion allotted to each sharer shall exceed Rs. 100, a stamp

duty of the above amount shall be charged on each copy of the paper of partition or other title deed which may be taken out by any of the parties after the partition shall have been approved by the Revenue Board. 1824.

Where the portion of each sharer shall not exceed Rs. 800, the following rate of duty shall be chargeable

		Rs.	As.
If the value of the portion shall not exceed	Rs. 100	0	8
More than Rs 100, but not exceeding	,, 200	1	0
,, 200 ,, ,,	,, 400	2	0
,, 400 ,, ,,	,, 600	4	0
,, 600 ,, ,,	,, 800	6	0

Policy of Assurance or Insurance or other Instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

		Rs.	As.
Where the sum insured shall not exceed	Rs. 5,000	4	0
Exceeding Rs. 5,000, but not exceeding	,, 10,000	8	0
,, 10,000 ,, ,,	,, 20,000	12	0
,, 20,000 ,, ,,	,, 50,000	16	0
,, 50,000 ...	... ,,	2[illegible]	0

Settlements Any Deed or Instrument whereby any sum or sums of money, or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of, any person or persons in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled or agreed to be settled; or in cases in which the value shall be indeterminate at the rate of Rs. 100.
Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate.	Chargeable as a Deed of Settlement.

Exemptions.

Wills, Testaments, and the like, together with Deeds merely declaratory of trust pursuant to any previous Settlements, Deed, or Will.

General Exemptions.

Deeds, Instruments, *and Writings of any kind in which Government or any Board, Commission, Court, or public officer, may, in a public capacity, be a party, save and except Deeds, Instruments and Writings relating to matters of, or belonging to, the Commercial Department, shall not be chargeable with any stamp-duty*

REG. XVIII OF 1825. *In force from 25th August, 1825*

This Regulation extended generally the operation of the Bengal Regulations to the territory acquired by Treaty from the Dutch on the 17th March 1824, *viz*, the settlement of Chinsurah and the factories and lands held by the Dutch at Calcapore, Dacca, Fulta, Patna, and Balasore It also provided a

29—1860. the admission in evidence as valid 'all deeds, whether on stamp paper or *otherwise, that may have been regularly and legally executed according to the* Dutch law or established local usage,' previous to 25th August, 1825

REG. X OF 1829.

In force { *from 16th June, 1829* *up to 1st Oct, 1860*

Bonds for annuities for an indefinite period, such as life annuities and the like. — Shall be charged at the rate of ten times the yearly payment.

Contracts and Deeds, if not otherwise charged or exempted from duty .. .. — As agreements.

Co-partnership, Deeds of .. ... — 8 0

Conveyances *(Kubalas, Bynamas, Hibanamas)* or deeds or instruments of any kind or description whatsoever executed for the sale or transfer for a consideration of any lands, tenements, rents, *annuities, or other property, real or personal, heritable or moveable,* or of any right, title, interest or claim to, or upon any lands, houses, annuities, or other property, *i e*, for, or in respect of, the principal or only deed, instrument, or writing, whereby the property sold shall be conveyed to or otherwise vested in the purchaser or purchasers, or to some other person by his or their directions.

				Rs	As.
Where the purchase or consideration money therein expressed or denoted, shall not exceed		..	Rs. 50	0	8
Above Rs.	50	and not exceeding	100	1	0
"	100	"	200	2	0
"	200	"	500	4	0
"	500	"	1,000	8	0
"	1,000	"	2,000	12	0
"	2,000	"	3,000	16	0
"	3,000	"	5,000	20	0
"	5,000	"	8,000	32	0
"	8,000	"	12,000	40	0
"	12,000	"	20,000	50	0
"	20,000	"	30,000	64	0
"	30,000	"	50,000	80	0
"	50,000	"	1,00,000	100	0
"	1,00,000	"	2,00,000	150	0
And for every further lakh of rupees beyond two lakhs				100	0

Note —When of several Deeds, Instruments or Writings a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to engross the same on paper, parchment, vellum, or the like stamped for the prescribed *ad valorem* duty.

Provided, however, that in all cases where there are more Deeds than one all other Deeds than the principal shall be charged with a like stamp *to the principal* Deed if of value not exceeding Rs. 8 (which sum shall be the maximum duty on collateral Deeds,) and all such collateral Deeds shall specify

by their contents, which other is the principal Deed by which the Conveyance has been effected, certifying that it is executed in the manner and on material stamped as required.

Exemptions

All Grants, Leases, Sales, or the like, wherein Government in its political or territorial capacity, is a party

Note.—*This exemption shall not extend to sales made for the recovery or arrears of revenue or rent, or in satisfaction of decrees of Court in which cases the purchasers shall be required to pay the prescribed duty along with the purchase-money, and shall receive from the officer conducting the sale a Deed of Sale (Byenama) executed on paper impressed with a corresponding stamp.*

Copies. Copy or counterpart of any Deed or Instrument attested to be a true copy and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest or right secured thereby	The same duty as prescribed for the original Deed by this Regulation.
Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the Agreement, Contract, Bond, Deed or other Instrument, per sheet	Rs. As. 0 8
Copy or extract of any Deed, Instrument, Schedule, Receipt, or other matter annexed to any Agreement, Contract, Bond, Deed, or other Instrument, per sheet — —	0 8
Authenticated Copies of any Records, Letters, Accounts, Statements, Reports, or other Writings furnished to individuals from any of the public offices of Government shall be written on paper of the size and description now used for the purpose, and called copy paper at the stamp office and of the value for each and every sheet of ... —	0 8

Exemptions

Copies made for the private use only of any person having the custody of the original instruments, or of his or her attorney or solicitor, and copies or Deeds, &c., retained in public offices on returning the originals.

Copies of papers which public officers are directed by any general Regulation to make, require, or furnish, not being specially declared chargeable with stamp-duty.

Deeds of any kind not otherwise particularized in this Schedule.	As agreements
Exchanges Any Deed, whereby any real property shall be conveyed, or surrendered in exchange for other property.	Rs. As.
If no sum of money be paid, or agreed to be paid, for equality of exchange — ...	8 0
And if any sum of money be paid or agreed to be paid for equality of exchange	The same *ad valorem* duty as for a conveyance for such sum.

Leases. Any lease made in perpetuity, or for a term of years or period determinable with one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent	The same duty as for a conveyance or sale for a sum of the amount of such consideration

Any **Lease of Lands,** Houses, *or other* real property at a monthly or yearly rent without any payment of any sum of money by way of fine or premium

Where the rent calculated for a whole year shall exceed twelve rupees, but not exceed			For a period not exceeding one year.		For a period exceeding one year	
			Rs	A	Rs.	A.
		Rs 24	0	4	0	8
Exceeding	Rs 24 but not exceeding	50	0	8	0	12
„	50 „ „	100	0	12	1	0
„	100 „ „	250	1	0	2	2
„	250 „ „	500	2	0	4	0
„	500 „ „	1,000	4	0	8	0
„	1,000 „ „	2,000	8	0	12	0
„	2,000 „ „	4,000	12	0	16	0
„	4,000 „ „	6,000	16	0	20	0
„	6,000 „ „	10,000	20	0	32	0
„	10,000 „	50,000	32	0	64	0
„	50,000 —	.	64	0	80	0

Any Lease of Lands, Houses, or other Real Property stipulating for a yearly rent and granted in consideration of a fine or premium	Shall be charged with a duty equal to both *ad valorem* duties above provided, *viz.*, both as Lease and Conveyance
The **Counterpart** of any Lease, *i.e.*, the *Kabulyut*, or the like	*Shall be* executed on paper, vellum or parchment bearing the same stamp as the original

Letters, or Powers-of-Attorney—*Mooktearnamas.*

	Rs.	As.
Powers to perform any one special, that is to say, particular act, or the acts connected with one particular suit, case ortransaction,	0	8
General, *i.e.*, not restricted as above to one case, suit or transaction.	4	0

Mortgages Any Deed of Mortgage or *Conditional* Sale, *Kutbala, Bye Bil Vufa, Bhog Bhundak,* &c., with or without possession given, of or for any lands, estates or property, real or personal, intended as a security for money due or to be lent thereupon: also, any Deed or contract accompanied with a deposit of Title-Deeds to any property where the same may be made as a security for payment of money due or lent at the time.	Shall be charged after the same manner and at the same rates as if in lieu of such Deed of Mortgage or the like, a Bond had been taken for the sum due or lent at the time

Deeds of Mortgage or the like given as security for the transfer of Government Securities or for the payment of an annuity for a fixed period, or for the delivery, at a future date, of any matter or thing capable of being valued.	Shall be charged at the above rate for the total amount assured or for the *bonâ fide* value
Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like,	Shall be charged at the rate of ten times the annual payment
Where the total amount secured by such mortgage is unlimited	The Deed may be executed on such

stamp as the party may choose, but no further sum can be recovered thereon than may be covered by the stamp

Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum	At the rate of such limitation
Note—When a Bond may have been already taken for the amount secured, or where from any other cause, the mortgage shall act merely as a collateral security to some other transaction already charged with the *ad valorem* duty thereupon the same being specified in the body of the Deed of Mortgage.	The Deed to be charged as a collateral Deed *See* Note after Conveyances
Likewise in case of there being more Deeds than one required to execute the mortgage in the manner desired by the parties, the principal Deed only shall be charged with the *ad valorem* duty and all other Deeds connected with the same transaction—	Shall be charged as prescribed in the rule for collateral Deeds under head "Conveyances"
Mortgages, Assignments, Acknowledgments, or Promissory-notes granted to the Treasurer, or other officer of the Bank of Bengal on account of the Bank, or to any private banker or agent for loans or advances made on the deposit of Government Securities, Bullion, Plate, Jewels, or other Goods	To be charged as Promissory notes

	Rs	As
Partitions by private agreement of heirs and co-sharers, or made by public officers of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, when a sharer's portion exceeds in value Rs. 800, then on every such sharer's copy of the Deed of Partition.	8	0
When the sharer's portion shall not exceed Rs 800, then if not exceeding Rs. 100	0	8
Exceeding Rs. 100 and not exceeding Rs. 200	1	0
" " 200 " " " 400	2	0
" " 400 " " " 600	4	0
" " 600 " " " 800	6	0

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And if any sum or sums of money shall be paid, or agreed to be paid, for equality of partition. | The principal Deed stipulating for such payment shall be charged besides with the *ad valorem* duty prescribed for a Conveyance or Sale for an equal sum.

Policy of Assurance or Insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

	Rs.	As.
Where the sum insured shall not exceed Rs 5,000	4	0
Exceeding Rs. 5,000 not exceeding 10,000	8	0
" 10 000 " 20,000	12	0
" 20,000 " 50,000	16	0
Above 50,000	20	0

Settlements, Marriage Settlements, &c., *viz*, any Deed or Instrument, whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled or agreed to be settled upon, for the benefit of any person or persons in any manner whatsoever | Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled, or agreed to be settled, or in cases which the value shall be indeterminate, at the rate chosen by the parties under the rule and condition prescribed for Bonds and Agreements

Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate, shall be charged as deeds of settlement.

Exemptions

Wills, testaments, and the like, together with deeds merely declaratory of trust, pursuant to any previous settlement, deed, or will.

General Exemption and Rule.

Deeds, Instruments, and Writings of any kind, in which Government, or any Board, Commission, Court or Public Office of Government, may in a public capacity, be a party, shall not be chargeable with any stamp-duty save and except Deeds, Instruments and Writings, relating to matters of, or belonging to, the Commercial Department, or on account of any commercial concern of, or belonging to, the Hon'ble Company, which shall be written on stamped paper of the same value as is or may be prescribed for the like Deeds or Instruments in the case of private individuals

Note.—The foregoing Exemption shall not extend to Deeds, Instruments and Writings executed to or by the Court of Wards, Local Agents or Officers acting under their authority, such transactions being liable to a stamp duty like the transactions of individuals.

27—1860. bear the requisite stamp or stamps equal in value to the requisite stamp, whether the signatures or seals of the parties and witnesses shall or shall not be upon such sheet or sheets The above provision shall apply to Deeds, Instruments, and Documents executed before this Act, as well as to Deeds, Instruments, and Documents which shall hereafter be executed. Provided as regards Deeds, Instruments, and Documents which shall be executed after the 1st day of January 1859, that every sheet or piece or paper or other material which shall contain any part of such Deed, Instrument, or Document shall be stamped with a Government stamp of the value of at least one anna.

STAMP-DUTIES, CALCUTTA.

REG XII OF 1826. *In force* { *from 12th July, 1827, up to 1st Oct, 1860*

	Rs As.
Agreement, or any minute or memorandum of an agreement concerning any matter or thing of the value of five hundred rupees or upwards, not otherwise charged in this schedule, nor expressly exempted from all stamp duty whether the same be only evidence of a contract, or obligatory upon the party ...	8 0
Assignments, if not of the nature specified under the heads of conveyances and settlements nor specially exempted	8 0

Bills of Sale.

An absolute bill of sale *See* Conveyances

Bill of sale as a security, being the principal or only deed whereby the property is conveyed *See* Mortgage

	Rs. As.
Bill of sale as a security, being merely a collateral one, with some deed or instrument that has paid the *ad valorem* duty prescribed for conveyances ...	8 0
Bonds for annuities for an indefinite period, such as life annuities and the like.	Shall be charged at the rate of ten times the yearly payment.
	Rs. As.
Bonds where the amount of the money to be secured or ultimately recovered shall be uncertain and unlimited	150 0
Where the amount is limited to a certain sum ...	The same as on a Bond for such limited sum.
	Rs. As.
Bonds taken as collateral security, with some deed or instrument that has paid the *ad valorem* duty prescribed for conveyances or money-bonds, or as security for the performance of any other contract covenant, or agreement, not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand	8 0

	Rs.	As.
Contracts, or Deeds, if not otherwise charged nor exempted from duty ... ... —		
Co-partnership, Deeds of	8	0

1827–

Conveyances, whether grant, disposition, assignment, transfer, renunciation, or of any other kind or description whatsoever upon the sale of any lands, tenements, rents, annuities, or other property, real or personal heritable or moveable, or of any right, title, interest, or claims in, to, out of, or upon any lands, houses, rents, annuities, or other property, that is to say, for or in respect of the principal or only deed, instrument, or writing whereby the property sold shall be conveyed to, or otherwise vested in the purchaser or purchasers or to some other person, by his or their direction

				Rs.	As.
Where the purchase-money therein expressed or denoted shall not exceed			Rs 50	0	8
Above Rs.	50	and not exceeding	100	1	0
"	100	"	200	2	0
"	200	"	500	4	0
"	500	"	1,000	8	0
"	1,000	"	2,000	12	0
"	2,000	"	3,000	16	0
"	3,000	"	5,000	20	0
"	5,000	"	8,000	32	0
"	8,000	"	12,000	40	0
"	12,000	"	20,000	50	0
"	20 000	"	30,000	64	0
"	30,000	"	50 000	80	0
"	50,000	"	100,000	100	0
"	100,000	"	200,000	150	0
And for every further lakhs of rupees beyond 2 lakhs				100	0

Note—Where of several deed, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed and to engross the same on paper, parchment, vellum, or the like stamped for the prescribed *ad va'orem* duty, provided, however, that in all cases where there are more deeds than one, all other deeds than the principal shall be charged with a stamp-duty of 8 rupees, and all such deeds shall specify by their contents which other is the principal deed by which the conveyance has been effected, certifying that it is executed in the manner and on the material stamped as required.

Exemptions.

All grants, leases, sales, or the like, wherein Government in its political or territorial capacity, is a party.

NOTE—This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of Court, in which cases the purchaser shall be required to pay the prescribed duty along with the purchase-money, and shall receive, from the officer conducting the sale a deed of sale executed on paper impressed with a corresponding stamp.

—1860. bear the requisite stamp or stamps equal in value to the requisite stamp, whether the signatures or seals of the parties and witnesses shall or shall not be upon such sheet or sheets. The above provision shall apply to Deeds, Instruments, and Documents executed before this Act, as well as to Deeds, Instruments, and Documents which shall hereafter be executed. Provided as regards Deeds, Instruments, and Documents which shall be executed after the 1st day of January 1859, that every sheet or piece or paper or other material which shall contain any part of such Deed, Instrument, or Document shall be stamped with a Government stamp of the value of at least one anna.

STAMP-DUTIES, CALCUTTA.

REG XII OF 1826. *In force* { *from 12th July, 1827, up to 1st Oct, 1860.*

	Rs. As.
Agreement, or any minute or memorandum of an agreement concerning any matter or thing of the value of five hundred rupees or upwards, not otherwise charged in this schedule, nor expressly exempted from all stamp duty whether the same be only evidence of a contract, or obligatory upon the party	8 0
Assignments, if not of the nature specified under the heads of conveyances and settlements nor specially exempted	8 0

Bills of Sale.

An absolute bill of sale *See* Conveyances.

Bill of sale as a security, being the principal or only deed whereby the *property is conveyed* *See* Mortgage

	Rs. As.
Bill of sale as a security, being merely a collateral one, with some deed or instrument that has paid the *ad valorem* duty prescribed for conveyances .	8 0
Bonds for annuities for an indefinite period, such as life annuities and the like.	Shall be charged at the rate of ten times the yearly payment.
	Rs. As.
Bonds where the amount of the money to be secured or ultimately recovered shall be uncertain and unlimited	150 0
Where the amount is limited to a certain sum ...	The same as on a Bond for such limited sum
	Rs. As.
Bonds taken as collateral security, with some deed or instrument that has paid the *ad valorem* duty prescribed for conveyances or money-bonds, or as security for the performance of any other contract, covenant, or agreement, not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand	8 0

1826

Any lease of lands, houses, or other real property, as a yearly rent, without any payment of any sum of money, by way of fine or premium.

			Rs	As.
Where the yearly rent shall exceed twelve, but shall not exceed Rs 24			0	8
Exceeding Rs 24 but not exceeding	Rs	50	0	12
" 50	"	100	1	0
" 100	"	250	2	0
" 250	"	500	4	0
" 500	"	1,000	8	0
" 1,000	"	2,000	12	0
" 2,000	"	4,000	16	0
" 4,000	"	6,000	20	0
" 6,000	"	10,000	32	0
" 10,000	"	50 000	64	0
Above Rs 50,000			50	0

Any lease of lands houses or other real property, stipulating for a yearly rent, and granted in consideration of a fine or premium	Shall be charged with both *ad valorem* duties above provided.
The counterpart of any lease charged with a duty exceeding eight rupees, shall likewise be executed on paper, vellum, or parchment bearing a stamp of	Rs. 4 As 0

Exemptions

All leases or pattahs given by authority of Government, or of the Board of Revenue.

	Rs	As.
Letters or powers of attorney, or commission, or factory, in the nature thereof.		
Powers to perform any one special, that is to say, particular act, or the acts connected with one particular suit, case, or transaction or sundry acts to be done, after a manner specified in the instrument	2	0
General	4	0

Mortgages. Any deed of mortgage or conditional sale, with or without possession given of any lands, estate, or property, real or personal, intended as a security for money due or to be lent thereupon; also any deed, or contract, accompanied with a deposit of title-deeds to any property, where the same may be made as a security for payment of money due or lent at the time.	Shall be charged after the same manner and at the same rates as if, in lieu of such deed of mortgage or the like, a bond had been taken for the sum due or lent at the time.

7—1860.	Deeds of Mortgage or the like, given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured, or of the *bonâ fide* value.
	Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of ten times the annual payment.
	Where the total amount secured by such mortgage is unlimited ...	Rs. As. 150 0
	Where it may be stipulated, that the amount secured by such mortgage shall not exceed a certain sum	At the rate of such limitation.
	Note.—Where a bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty thereupon, the same being specified in the body of the deed of mortgage. Likewise in case of there being more deeds than one required, to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction	Rs As. 8 0

Acknowledgments or promissory notes granted to the treasurer or other officer of the Bank of Bengal, on account of the Bank, or to any private banker or agent for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods and payable within three months after date, shall be charged as promissory notes. If payable at a date exceeding three months, shall be charged as deeds of mortgage.

Partition Any deed of partition of real or personal property adjusted by mutual agreement amongst co heirs, co-parceners, or the like	Rs. As 8 0
If any sum or sums of money shall be paid or agreed to be paid for equality of partition	The principal deed stipulating for such payment shall be charged with the *ad valorem* duty prescribed for a conveyance or sale for an equal sum.

Policy of Assurance or Insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives

1827—

		Rs.	As.
Where the sum insured shall not exceed	Rs. 5,000	4	0
Exceeding Rs. 5,000, not exceeding	10,000	8	0
,, 10,000 ,,	20,000	10	0
,, 20,000 ,,	50,000	16	0
Above 50,000	..	20	0

Settlements Any deed or instrument whereby any sum or sums of money, or any Government Securities, or other property real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons, in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled, or agreed to be settled, or in case in which the value shall be indeterminate at the rate of 100 rupees.

Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate, shall be charged as deeds of settlement

Exemptions.

Wills, testaments and the like, together with deeds merely declaratory of trust pursuant to any previous settlement, deed, or will

General Exemptions.

Deeds instruments and writing of any kind in which Government or any Board, Commission, Court, or public officer, may, in a public capacity, be a party, save and except deeds, instruments, and writings relating to matters of or belonging to the commercial department, shall not be chargeable with any stamp-duty

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STAMP DUTIES, MADRAS PRESIDENCY.

REG VIII OF 1808. *In force* { *from 1st Jan, 1809.* *up to 12th July, 1817*

All original deeds for the **Sale Gift, Devise** or other **Transfer** of property, real or personal, all **deeds of Mortgage, Assignment** or **Release,** and all other deeds of contract and **agreement**, as well as other legal instruments of whatever denomination (with the exceptions hereafter noticed) which may be executed within the provinces subject to the Presidency of Fort St. George from and after the 1st day of January, 1809 and all **Copies** of such deeds and instruments, which may be prepared after the said date as legal vouchers, whether by a Cauzy, Mufty, or any other person, shall be written on stamped

7—1880 Deeds of Mortgage or the like, given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured, or of the *bonâ fide* value.
Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of ten times the annual payment.
Where the total amount secured by such mortgage is unlimited . . —	Rs. As. 150 0
Where it may be stipulated, that the amount secured by such mortgage shall not exceed a certain sum	At the rate of such limitation.
Note.—Where a bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty thereupon, the same being specified in the body of the deed of mortgage. Likewise in case of there being more deeds than one required, to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction.	Rs As. 8 0

Acknowledgments or promissory notes granted to the treasurer or other officer of the Bank of Bengal, on account of the Bank, or to any private banker or agent for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods and payable within three months after date, shall be charged as promissory-notes. If payable at a date exceeding three months, shall be charged as deeds of mortgage.

Partition Any deed of partition of real or personal property adjusted by mutual agreement amongst co heirs, co-parceners, or the like	Rs. As 8 0
If any sum or sums of money shall be paid or agreed to be paid for equality of partition	The principal deed stipulating for such payment shall be charged with the *ad valorem* duty prescribed for a conveyance or sale for an equal sum

Policy of Assurance or Insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives

1827

		Rs.	As.
Where the sum insured shall not exceed	Rs. 5,000	4	0
Exceeding Rs 5,000, not exceeding	10,000	8	0
" 10,000 "	20,000	10	0
" 20,000 "	50,000	16	0
Above 50,000		20	0

Settlements. Any deed or instrument whereby any sum or sums of money, or any Government Securities, or other property real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons, in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled, or agreed to be settled, or in case in which the value shall be indeterminate at the rate of 100 rupees.

Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate, shall be charged as deeds of settlement

Exemptions.

Wills, testaments and the like, together with deeds merely declaratory of trust pursuant to any previous settlement, deed, or will

General Exemptions.

Deeds instruments and writing of any kind in which Government or any Board, Commission, Court, or public officer, may, in a public capacity, be a party, save and except deeds, instruments, and writings relating to matters of or belonging to the commercial department, shall not be chargeable with any stamp-duty

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STAMP DUTIES, MADRAS PRESIDENCY.

REG. VIII OF 1808. *In force* *from 1st Jan., 1809. up to 12th July, 1817.*

All original deeds for the **Sale, Gift, Devise** or other **Transfer** of property, real or personal, all deeds of **Mortgage, Assignment or Release,** and all other deeds of contract and **agreement,** as well as other legal instruments of whatever denomination (with the exceptions hereafter noticed) which may be executed within the provinces subject to the Presidency of Fort St. George from and after the 1st day of January, 1809 and all **Copies** of such deeds and instruments, which may be prepared after the said date as legal vouchers, whether by a Cauzy, Mufty, or any other person, shall be written on stamped

—1860		
	Deeds of Mortgage or the like, given as security for *the transfer* of Government Securities, or for the payment of an annuity for a fixed period or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured, or of the *bond fide* value.
	Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of ten times the annual payment.
	Where the total amount secured by such mortgage is unlimited ...	Rs. As. 150 0
	Where it may be stipulated, that the amount secured by such mortgage shall not exceed a certain sum	At the rate of such limitation.
	Note.—Where a bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty thereupon, the same being specified in the body of the deed of mortgage. Likewise in case of there being more deeds than one required, to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction.	Rs. As. 8 0

Acknowledgments or promissory notes granted to the treasurer or other officer of the Bank of Bengal, on account of the Bank, or to any private banker or agent for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods and payable within three months after date, shall be charged as promissory-notes. If payable at a date exceeding three months, shall be charged as deeds of mortgage.

Partition. Any deed of partition of real or personal property adjusted by mutual agreement amongst co heirs, co-parceners, or the like	Rs. As. 8 0
If any sum or sums of money shall be paid or agreed to be paid for equality of partition	The principal deed stipulating *for such payment* shall be charged with the *ad valorem* duty prescribed for a conveyance or sale for an equal sum

Policy of Assurance or Insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives

1827—

			Rs.	As.
Where the sum insured shall not exceed		Rs. 5,000	4	0
Exceeding Rs. 5,000, not exceeding		10,000	8	0
,,	10,000 ,,	20,000	10	0
,,	20,000 ,,	50,000	16	0
Above	50,000	..	20	0

Settlements. Any deed or instrument whereby any sum or sums of money, or any Government Securities, or other property real or personal, shall be settled or agreed to be settled upon, orfor the benefit of any person or persons, in any manner whatsoever.	Shall be charged with the *ad valorem* duty chargeable for a Bond for the amount or value settled, or agreed to be settled, or in case in which the value shall be indeterminate at the rate of 100 rupees.

Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate, shall be charged as deeds of settlement

Exemptions.

Wills, testaments and the like, together with deeds merely declaratory of trust pursuant to any previous settlement, deed, or will

General Exemptions.

Deeds instruments and writing of any kind in which Government or any Board, Commission, Court, or public officer, may, in a public capacity, be a party; save and except deeds, instruments, and writings relating to matters of or belonging to the commercial department, shall not be chargeable with any stamp-duty.

STAMP DUTIES, MADRAS PRESIDENCY.

REG. VIII OF 1808. *In force* | *from 1st Jan., 1809. up to 12th July, 1817.*

All original deeds for the **Sale Gift, Devise** or other **Transfer** of property, real or personal, all **deeds of Mortgage, Assignment or Release,** and all other deeds of contract and **agreement,** as well as other legal instruments of whatever denomination (with the exceptions hereafter noticed) which may be executed within the provinces subject to the Presidency of Fort St. [illegible]

27—1860 Deeds of Mortgage or the like, given as security for *the transfer of* Government Securities, or for the payment of an annuity for a fixed period or for *the* delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured, or of the *boná fide* value.
Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of ten times the annual payment.
Where the total amount secured by such mortgage is unlimited ...	Rs. As. 150 0
Where it may be stipulated, that the amount secured by such mortgage shall not exceed a certain sum	At the rate of such limitation.
Note.—Where a bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty thereupon, the same being specified in the body of the deed of mortgage. Likewise in case of there being more deeds than one required, to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction.	Rs As. 8 0

Acknowledgments or promissory notes granted to the treasurer or other officer of the Bank of Bengal, on account of the Bank, or to any private banker or agent for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods and payable within three months after date, shall be charged as promissory notes. If payable at a date exceeding three months, shall be charged as deeds of mortgage.

Partition. Any deed of partition of real or personal property adjusted by mutual agreement amongst co heirs, co-parceners, or the like	Rs. As 8 0
If any sum or sums of money shall be paid or agreed to be paid for equality of partition	The principal deed stipulating for such payment shall be charged with the *ad valorem* duty prescribed for a conveyance or sale for an equal sum

Policy of Assurance or Insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives

		Rs.	As.
Where the sum insured shall not exceed	Rs. 5,000	4	0
Exceeding Rs. 5,000, not exceeding	10,000	8	0
,, 10,000 ,,	20,000	10	0
,, 20,000 ,,	50,000	16	0
Above 50,000 ...		20	0

Settlements. Any deed or instrument whereby any sum or sums of money, or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons, in any manner whatsoever.	*Shall be charged* with the *ad valorem* duty chargeable for a Bond for the amount or value settled, or agreed to be settled, or in case in which the value shall be indeterminate at the rate of 100 rupees.

Deeds of Gift and Dower, whether to take effect on the instant or at a future period, determinate or indeterminate, shall be charged as deeds of settlement

Exemptions.

Wills, testaments and the like, together with deeds merely declaratory of trust pursuant to any previous settlement, deed, or will

General Exemptions.

Deeds instruments and writing of any kind in which Government or any Board, Commission, Court, or public officer, may, in a public capacity, be a party, save and except deeds, instruments, and writings relating to matters of or belonging to the commercial department, shall not be chargeable with any stamp-duty.

STAMP DUTIES, MADRAS PRESIDENCY.

REG. VIII OF 1808. *In force* { *from 1st Jan., 1809. up to 12th July, 1817.*

All original deeds for the **Sale, Gift, Devise** or other **Transfer** of property, real or personal, all **deeds of Mortgage, Assignment or Release,** and all other deeds of contract and **agreement**, as well as other legal instruments of whatever denomination (with the exceptions hereafter noticed) which may be *executed within the provinces subject* to the Presidency of Fort George from and after the 1st day of January, 1809 and all **Copies** of such d and instruments, which may be prepared after the said date as legal vouc whether by a Cauzy, Mufty, or any other person, shall ` en on stam

—1880. Deeds of Mortgage or the like, given as security for the transfer of Government Securities, or for the payment of an annuity for a fixed period or for the delivery at a future date of any matter or thing capable of being valued	Shall be charged at the rate of the total amount assured, or of the *bonâ fide* value.
Deeds of Mortgage given for the security of annuities for an indefinite period, such as life annuities and the like	Shall be charged at the rate of ten times the annual *payment*.
	Rs. As.
Where the total amount secured by such mortgage is unlimited —	150 0
Where it may be stipulated, that the amount secured by such mortgage shall not exceed a certain sum.	At the rate of such limitation.
Note.—Where a bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as collateral security to some other transaction, already charged with the *ad valorem* duty thereupon, the same being specified in the body of the deed of mortgage	Rs As.
Likewise in case of there being more deeds than one required, to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the *ad valorem* duty, and all other deeds connected with the same transaction.	8 0

Acknowledgments or promissory notes granted to the treasurer or other officer of the Bank of Bengal, on account of the Bank, or to any private banker or agent for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods and payable within three months after date, shall be charged as promissory-notes. If payable at a date exceeding three months, shall be charged as deeds of mortgage.

Partition. Any deed of partition of real or personal property adjusted by mutual agreement amongst co heirs, co-parceners, or the like	Rs. As. 8 0
If any sum or sums of money shall be paid or agreed to be paid for equality of partition	The principal deed stipulating for such payment shall be charged with the *ad valorem* duty prescribed for a conveyance or sale for an equal sum

Policy of Assurance or Insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives

Conveyances when the consideration is an annuity.	The same stamp as for a Conveyance when the purchase money is equal to ten times the annuity.
Conveyances of any kind whatever not otherwise charged if the value of the property conveyed, or of the consideration for the Conveyance be stated or appear on the face of the Conveyance.	The same duty as would be charged if a consideration in money equal to such value were expressed in the Conveyance as the consideration thereof
If no value appear on the face of the Conveyance	Fifty Rupees.

Note—When of several Deeds, Instruments or Writings a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed In all cases however, where there are more Deeds than one, every other Deed than the principal requires the same stamp as the principal Deed, if of value not exceeding eight Rupees (which shall be the maximum stamp for collateral Deeds), and all such collateral Deeds shall specify by their contents which other is the principal Deed by which the Conveyance has been effected, certifying that it is executed on the proper stamp.

Exemptions

	Rs.	As.
Co-partnership.—Deed or other Instruments of—	8	0
Copies—Copy or Extract of any Deed or Instrument attested to be a true copy of extract and furnished for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby.	The same duty as prescribed for the original Deed by this Act.	
	Rs	As.
Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, deed, or other instrument, per sheet.	0	8
Copy or Extract of any Deed, Instrument, Schedule, Receipt, or other matter annexed to any agreement, contract bond, deed, or other instrument, per sheet	0	6
Copies authenticated of any records, letters, accounts, statements, reports, or other writings, furnished to individuals from any of the public offices of Government, per sheet	0	8

Exemptions.

Copies of papers which Public Officers are directed by any law or general regulation to make, require, or furnish, for which stamps are not specially required by this Schedule,

1860—1862.

When the amount is limited to a certain sum.	The same stamp as for a Bond for the payment of such limited sum.
Bonds or other obligations for the due execution of an office or work, taken *by individuals*, and all other Bonds not otherwise specially provided for	An optional *stamp—See* Section XIV of the Act.
Bonds or other obligations taken as *collateral security with some Deed or* Instrument executed on the stamp prescribed for Conveyances or Money bonds or as security for the performance of any other contract, covenant, or agreement not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand	The same stamp as the Deed, Instrument, Contract, Covenant, or Agreement, if of value not exceeding eight Rupees, otherwise a stamp of eight Rupees

Contracts and Deeds, not otherwise specially provided for ... | As agreements.

Conveyances or Deeds or Instruments of any kind or description whatsoever, executed for the sale or transfer, for a consideration, of any lands, tenements, rents, annuities, or other *property, real or personal* moveable or immoveable, or of any right, title, or claim to or upon, or interest in any lands, houses, rents, annuities, or property, that is to say, for or in respect, of the principal or only Deed, Instrument, or Writing whereby the property sold shall be conveyed to or otherwise vested in the purchaser or purchasers, or to some other person by his, her, or their directions.

When the purchase or consideration money therein expressed or denoted shall not exceed one hundred Rupees					Rs.	As.
Rupees	...	..	...	...	1	0
Above Rs	100 and	not exceeding	Rs	200	2	0
"	200	"	"	400	4	0
"	400	"	"	800	8	0
"	800	"	"	1,200	12	0
"	1,200	"	"	2,000	20	0
"	2,000	"	"	3,000	30	0
"	3,000	"	"	4,000	40	0
"	4,000	"	"	5,000	50	0
"	5,000	"	"	7,500	75	0
"	7,500	"	"	10,000	100	0
"	10,000	"	"	20,000	150	0
"	20,000	"	"	40,000	200	0
"	40,000	"	"	60,000	300	0
"	60,000	"	"	80,000	400	0
"	80,000	"	"	100,000	500	0
And for every further		—	—	50,000	200	0
Or part thereof		—	..	...	100	0

Conveyances when the consideration is an annuity.	The same stamp as for a Conveyance when the purchase-money is equal to ten times the annuity.
Conveyances of any kind whatever not otherwise charged if the value of the property conveyed, or of the consideration for the Conveyance be stated or appear on the face of the Conveyance.	The same duty as would be charged if a consideration in money equal to such value were expressed in the Conveyance as the consideration thereof
If no value appear on the face of the Conveyance	Fifty Rupees

Note—When of several Deeds, Instruments or Writings a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In all cases however, where there are more Deeds than one, every other Deed than the principal requires the same stamp as the principal Deed, if of value not exceeding eight Rupees (which shall be the maximum stamp for collateral Deeds), and all such collateral Deeds shall specify by their contents which other is the principal Deed by which the Conveyance has been effected, certifying that it is executed on the proper stamp.

Exemptions

	Rs.	As.
Co-partnership.—Deed or other Instruments of—	8	0
Copies.—Copy or Extract of any Deed or Instrument attested to be a true copy of extract and furnished for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby.	The same duty as prescribed for the original Deed by this Act.	
	Rs.	As.
Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, *deed, or other instrument, per sheet.*	0	8
Copy or Extract of any Deed, Instrument, Schedule, Receipt, or other matter annexed to any agreement, contract bond, deed, or other instrument, per sheet	0	6
Copies authenticated of any records, letters, accounts, statements, reports, or other writings, furnished to individuals from any of the public offices of Government, per sheet	0	8

Exemptions.

Copies of papers which Public Officers are directed by any law or general regulation to make, require, or furnish, for which stamps are not specially required by this Schedule.

0—1862

Where a Bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as a collateral security to some other transaction in which an Instrument *requiring a stamp* has been executed.	The same stamp as for the Bond or other Instrument, if of value not exceeding eight Rupees; otherwise a stamp of eight Rupees.
Where there are more Deeds than one required to execute the mortgage in the manner desired by the parties, then for every other Deed than the principal Deed, provided the original Deed has been duly stamped	The same stamp as for the principal Deed, if of value not exceeding eight Rupees; in other cases a stamp of eight Rupees
Mortgages, assignments, or acknowledgments granted *for loans or advances made on the deposit of Government Securities*, bullion, plate, jewels, or other goods.	The same stamp as for *Promissory notes*.

Partitions by private agreement or made by public officers of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, for every such sharer's copy of the Deed of Partition—

			Rs.	As.
Where the sharer's portion does not exceed one hundred Rupees in value	...	.	0	
Exceeding Rs. 100 and not exceeding		100	1	0
" 200	"	400	2	0
" 400	"	600	4	0
" 600	"	800	6	0
" 800	"	1,000	8	0
And for every additional four hundred Rupees, or part thereof	...	...	2	0

When the subject of the partition, consisting either wholly or in part of *other property than money, and money*, not being part of such subject, is paid, or agreed to be paid for the purpose of *compensating any difference from just* proportion in the partition actually made *to that subject*.	*A stamp of value equal to the* joint values of the stamps which would have been required, had the subject of partition been actually divided with the just proportion, and of the stamp for a Conveyance or Deed of Sale for a sum equal to the amount so paid, or agreed to be paid for the purpose of compensating the difference therefrom.

Policy of Assurance or Insurance, or other Instrument, by whatever name the same shall be called, whereby an Insurance shall be made upon any life or lives, or upon any event depending upon any life or lives—

	Rs.	As.
For every sum of one thousand Rupees and also for each and every fractional part of one thousand Rupees	0	8
Receipts or discharges given for the payment of money or in acquittal of a debt, paid in money or otherwise when the sum received discharged, or acquitted amounts to ten Rupees and does not exceed fifty Rupees - -	0	½
If the sum exceeds fifty Rupees ..	0	1
Schedules referred to in any Agreement Lease, Bond, Deed, or other Instrument, for every thousand words, or part thereof	10	0

Settlements, Marriage-Settlements, &c., namely any Deed or Instrument whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled, or agreed to be settled upon or for the benefit of any person or persons in any manner whatsoever	The same stamp as for a Bond for the payment of the amount of value settled or agreed to be settled; or, in cases in which the value shall be indeterminate, an optional stamp—*See* section XIV of the Act.

Exemption

Wills, Testaments, and the like, together with Deeds merely declaratory of trust or appointment or apportionment or otherwise, in execution of powers or pursuant to any previous Settlement, Deed or Will

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ACT X OF 1862 *In force* { *from 1st June, 1862 up to 1st Jan., 1870*

	Rs	As.
Agreement, or any **Minute or Memorandum of an Agreement,** not being of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower, and not being otherwise provided for in this Schedule, whether the same be only evidence of a contract or obligatory upon the parties ...	1	0

Note—If two or more letters are offered in evidence to prove an Agreement between the parties who shall have written such letters, it will be sufficient if any one of such letters be stamped as an Agreement.

If the Agreement or Minute or Memorandum be of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower	The same stamp as prescribed by this Schedule for such Instrument
Agreement for an annual or periodical payment not otherwise charged for in this Schedule.	The same stamp as for a Bond for the amount of ten years' payment, or of the total sum secured if less

0—1862.

Where a Bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as a collateral security to some other transaction in which an Instrument requiring a stamp has been executed.	The same stamp as for the Bond or other Instrument, if of value not exceeding eight Rupees; otherwise a stamp of eight Rupees.
Where there are more Deeds than one required to execute the mortgage in the manner desired by the parties, then for every other Deed than the principal Deed, provided the original Deed has been duly stamped	The same stamp as for the principal Deed, if of value not exceeding eight Rupees; in other cases a stamp of eight Rupees.
Mortgages, assignments, or acknowledgments granted for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods.	The same stamp as for Promissory notes.

Partitions by private agreement or made by public officers of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, for every such sharer's copy of the Deed of Partition—

	Rs.	As.
Where the sharer's portion does not exceed one hundred Rupees in value	0	
Exceeding Rs. 100 and not exceeding 100	1	0
" 200 " 400	2	0
" 400 " 600	4	0
" 600 " 800	6	0
" 800 " 1,000	8	0
And for every additional four hundred Rupees, or part thereof	2	0

When the subject of the partition, consisting either wholly or in part of other property than money, and money not being part of such subject, is paid, or agreed to be paid for the purpose of compensating any difference from just proportion in the partition actually made to that subject.	A stamp of value equal to the joint values of the stamps which would have been required, had the subject of partition been actually divided with the just proportion, and of the stamp for a Conveyance or Deed of Sale for a sum equal to the amount so paid, or agreed to be paid for the purpose of compensating the difference therefrom.

Policy of Assurance or Insurance, or other Instrument, by whatever name the same shall be called, whereby an Insurance shall be made upon any life or lives, or upon any event depending upon any life or lives—

For every sum of one thousand Rupees and also for each and every fractional part of one thousand Rupee — Rs. As. 1 8

Receipts or discharges given for the payment of money or in acquittal of a debt, paid in money or otherwise when the sum received discharged, or acquitted amounts to ten Rupees and does not exceed fifty Rupees — 0 1

If the sum exceeds fifty Rupees — 0 1

Schedules referred to in any Agreement Lease, Bond, Deed, or other Instrument for every thousand words, or part thereof — 10

Settlements, Marriage-Settlements, &c, namely any Deed or Instrument whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled, or agreed to be settled upon or for the benefit of any person or persons in any manner whatsoever	The same stamp as for a Bond for the payment of the amount of value settled or agreed to be settled, or, in cases in which the value shall be indeterminate, an optional stamp—*See* section XIV of the Act

Exemption

Wills, Testaments, and the like, together with Deeds merely declaratory of trust or appointment or apportionment or otherwise, in execution of powers or pursuant to any previous Settlement, Deed or Will

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ACT X OF 1862

In force { *from 1st June, 1862 up to 1st Jan., 1870*

	Rs.	As.
Agreement, or any **Minute or Memorandum of an Agreement,** not being of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower, and not being otherwise provided for in this Schedule, whether the same be only evidence of a contract or obligatory upon the parties	1	0

Note—If two or more letters are offered in evidence to prove an Agreement between the parties who shall have written such letters, it will be sufficient if any one of such letters be stamped as an Agreement.

If the Agreement or Minute or Memorandum be of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower.	The same stamp as prescribed by this Schedule for such Instrument.
Agreement for an annual or periodical payment not otherwise charged for in this Schedule.	The same stamp as for a Bond for the amount of ten years' payment, or of the total sum secured if less

80—1862.

Where a Bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as a collateral security to some other transaction in which an Instrument requiring a stamp has been executed,	The same stamp as for the *Bond or other Instrument, if of value not exceeding eight* Rupees; otherwise a stamp of eight Rupees.
Where there are more Deeds than one required to *execute the mortgage in the manner desired by the parties, then for every other Deed than the principal Deed,* provided the original Deed has been duly stamped	The same stamp as for the principal Deed, if of value not exceeding eight Rupees; in other cases a stamp of eight Rupees
Mortgages, assignments, or acknowledgments granted for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other goods,	The same stamp as for Promissory notes.

Partitions by private agreement or made by public officers *of estates* or property, real or personal, or in the nature of *separation of* brotherhood, as amongst Hindoos, for every such sharer's copy of *the Deed* of Partition—

	Rs.	As.
Where the sharer's portion does not exceed one hundred Rupees in value	0	
Exceeding Rs. 100 and not exceeding 100	1	0
" 200 " 400	2	0
" 400 " 600	4	0
" 600 " 800	6	0
" 800 " 1,000	8	0
And for every additional four hundred *Rupees*, or part thereof	2	0

When the subject of the partition, consisting either wholly or in part of other property than money, and money not being part of such subject, is paid, or agreed to be paid for the purpose of compensating any difference from just *proportion in the partition actually made to that subject*.	A stamp of value equal to the joint values of the stamps which would have been required, *had the subject of* partition been actually divided with the just proportion, and of the stamp for a Conveyance or Deed of Sale for a sum equal to the amount so paid, or agreed to be paid for the purpose of compensating the *difference therefrom*

Policy of Assurance or Insurance, or other Instrument, by whatever name the same shall be called, whereby an Insurance shall be made upon any life or lives, or upon any event depending upon any life or lives—

	Rs.	As.
For every sum of one thousand Rupees and also for each and every fractional part of one thousand Rupees	0	4
Receipts or discharges given for the payment of money or in acquittal of a debt, paid in money or otherwise when the sum received discharged, or acquitted amounts to ten Rupees and does not exceed fifty Rupees	0	½
If the sum exceeds fifty Rupees	0	1
Schedules referred to in any Agreement, Lease, Bond, Deed, or other Instrument, for every thousand words, or part thereof	10	0

Settlements, Marriage-Settlements, &c., namely any Deed or Instrument whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled, or agreed to be settled upon or for the benefit of any person or persons in any manner whatsoever	The same stamp as for a Bond for the payment of the amount of value settled or agreed to be settled; or, in cases in which the value shall be indeterminate, an optional stamp—*See* section XIV of the Act

Exemption

Wills, Testaments, and the like, together with Deeds merely declaratory of trust or appointment or apportionment or otherwise, in execution of powers or pursuant to any previous Settlement, Deed or Will.

ACT X OF 1862.

In force } *from 1st June, 1862 up to 1st Jan., 1870*

	Rs.	As.
Agreement, or any **Minute or Memorandum of an Agreement**, not being of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower, and not being otherwise provided for in this Schedule, whether the same be only evidence of a contract or obligatory upon the parties	1	0

Note—If two or more letters are offered in evidence to prove an Agreement between the parties who shall have written such letters, it will be sufficient if any one of such letters be stamped as an Agreement.

If the Agreement or Minute or Memorandum be of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower.	The same stamp as prescribed by this Schedule for such Instrument.
Agreement for an annual or periodical payment not otherwise charged for in this Schedule.	The same stamp as for a Bond for the amount of ten years' payment, or of the total sum secured if less

—1862.

Where a Bond may have been already taken for the amount *secured*, *or where from any other cause* the mortgage *shall act merely* as a *collateral* security to some other transaction in which an Instrument requiring a stamp has been executed.	The same stamp as for the Bond or other Instrument, if of value not exceeding eight Rupees; otherwise a stamp of eight Rupees.
Where there are more *Deeds* than one required to execute the mortgage in the manner desired by the parties, then for every other Deed than the principal Deed, provided the original Deed has been duly stamped	The same stamp as for the principal Deed, *if of value* not *exceeding* eight *Rupees*; *in other cases* a stamp *of eight* *Rupees*
Mortgages, assignments, or acknowledgments granted for loans or advances made on the deposit of Government Securities, bullion, plate, jewels, or other *goods*.	The same stamp as for Promissory notes.

Partitions by private agreement or made by public officers of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, for every such sharer's copy of the Deed of Partition—

	Rs.	As.
Where the sharer's portion does not exceed one hundred Rupees in value	0	
Exceeding Rs. 100 and not exceeding 200	1	0
" 200 " 400	2	0
" 400 " 600	4	0
" 600 " 800	6	0
" 800 " 1,000	8	0
And for every additional four hundred Rupees, or part thereof	2	0

When the subject of the *partition*, consisting either wholly or in part of other property than money, and money, not being part of such subject, is paid, or agreed to be paid for the purpose of compensating any *difference from just* proportion *in the partition actually made* of that subject,	A stamp *of value* equal to the joint values of the stamps which would have been required, had the subject of partition been actually divided with the just proportion, and of the stamp for a Conveyance or Deed of Sale for a sum equal to the amount so paid, or *agreed to be paid for the pur*pose of compensating the difference therefrom.

Policy of Assurance or Insurance, or other *Instrument*, by whatever name the same shall be called, whereby an *Insurance* shall be made upon any life or lives, or upon any event depending upon any life or lives—

	Rs.	As
For every sum of one thousand Rupees and also for each and every fractional part of one thousand Rupees ...	o	8
Receipts or discharges given for the payment of money or in acquittal of a debt, paid in money or otherwsie when the sum received discharged, or acquitted amounts to ten Rupees and does not exceed fifty Rupees — ..	o	½
If the sum exceeds fifty Rupees	o	1
Schedules referred to in any Agreement .. , Lease, Bond, Deed, or other Instrument, for every thousand words, or part thereof	10	o

Settlements, Marriage-Settlements, &c, namely any Deed or Instrument whereby any sum or sums of money, or any Government Securities or other property, real or personal, shall be settled, or agreed to be settled, upon or for the benefit of any person or persons in any manner whatsoever	The same stamp as for a Bond for the payment of the amount of value settled or agreed to be settled; or, in cases in which the value shall be indeterminate, an optional stamp—*See* section XIV of the Act.

Exemption

Wills, Testaments, and the lik, together with Deeds merely declaratory of trust or appointment or apportionment or otherwise, in execution of powers or pursuant to any previous Settlement, Deed or Will

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ACT X OF 1862

In force } *from 1st June*, 1862 *up to 1st Jan.*, 1870

	Rs	As.
Agreement, or any **Minute or Memorandum of an Agreement**, not being of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower, and not being otherwise provided for in this Schedule, whether the same be only evidence of a contract or obligatory upon the parties	1	o

Note—If two or more letters are offered in evidence to prove an Agreement between the parties who shall have written such letters, it will be sufficient if any one of such letters be stamped as an Agreement.

If the Agreement or Minute or Memorandum be of the nature of a Bond or other Obligation for the payment of money or of a Conveyance, or of a Deed of Mortgage, Gift, or Dower	The same stamp as prescribed by this Schedule for such Instrument.
Agreement for an annual or periodical payment not otherwise charged for in this Schedule.	The same stamp as for a for the amount of ten payment, or of th secured if less

32—1870.

Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the Deed, Instrument, or Writing, per sheet	8 Annas.
Copy, attested or certified to be a true copy or made for the purpose of being given in evidence in any civil or revenue proceeding, or of any Will, Testament, or Codicil, or of any Probate, or Probate Copy of any Will or Codicil, or of any Letter of Administration, or of any confirmation of any Testament, Testamentary or Dative, or of any part thereof respectively	1 Rupee.
Copy or Extract of any Deed, Instrument, or Writing, annexed to any Deed, Instrument, or Writing	The same stamp as the Deed, Instrument, or Writing from which the copy or extract is made, if of value not exceeding 8 Annas otherwise 8 Anna, per sheet
Copy, authenticated or certified of any record, letter, account, statement report or other writing furnished to any individual from any Government Office per sheet	8 Annas.

Exemption

Copy of any paper which any public officer is required to make or furnish, for which a stamp is not specially required by this Schedule.

Counterpart of a Lease ..	The same stamp as for such lease.
Covenant.—Any separate Deed of Covenant made on the sale or mortgage of any immoveable property or of any right or interest therein (the same not being a Deed, chargeable with *ad valorem* duty under the head of Conveyance in this Schedule) for the conveyance, assignment surrender, or release of such property, right, or interest, or for the title to or quiet enjoyment, freedom from incumbrance, or further assurance of such property, right, or interest or otherwise by way of indemnity in respect of the same or for the production of the Title Deeds, or Muniment of Title relating thereto, or for all or any of those purposes	10 Rupees.
Deed of Gift or Dower whether to take effect on the instant or at a future period, determinate or indeterminate.	The same stamp as for a Conveyance.
Deed of any kind not otherwise charged or expressly exempted from stamp-duty by this Schedule.	1 Rupee.
Duplicate or counterpart of any Deed, Instrument, or Writing of any description whatever chargeable with duty under this Act not otherwise charged for or expressly exempted from stamp duty under this Schedule.	The same duty as the original when such duty does not exceed 8 Annas

If the duty chargeable on the original exceed 8 annas but do not exceed 10 rupees.	1 Rupee
If the duty chargeable on the original exceed 10 rupees but do not exceed 50 rupees	2 Rupees
If the duty chargeable on the original exceed 50 rupees.	5 Rupees

Provided that such duplicate or counterpart stamp shall be affixed by the Collector of Stamp Revenue of the District upon the production of the original Deed bearing its proper stamp and not otherwise

Exchange—Any Deed, Instrument, or Writing whereby any real property shall be conveyed or surrendered in exchange for other property	The same stamp as for a Conveyance.
Lease—Any lease made in perpetuity, or for a term of years or period determinable with one or more lives or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine or the like, if without rent	The same stamp as for a Conveyance, or Deed of Sale for a sum of the amount of such consideration.

Any lease of any land, house or other real property at a rent without any payment of any sum of money by way of fine or premium—	When the lease is for a period not exceeding one year.		When the lease is for a period exceeding one year.	
	Rs	As.	Rs	As
Where the rent calculated for a whole year shall not exceed in value 24 rupees —	0	4	0	8
Exceeding Rs 24 but not exceeding Rs 50	0	8	0	12
,, 50 ,, ,, 100	0	12	1	0
,, 100 ,, ,, 250	1	0	2	0
,, 250 ,, ,, 500	2	0	4	0
,, 500 ,, ,, 1,000	4	0	8	0
,, 1,000 ,, ,, 2,000	8	0	16	0
,, 2000 ,, ,, 4,000	16	0	32	0
,, 4,000 ,, ,, 6,000	24	0	48	0
,, 6,000 ,, ,, 10,000	40	0	80	0
,, 10,000 ,, ,, 25,000	100	0	200	0
,, 25,000 ,, ,, 50,000	200	0	400	0
And for every additional 25,000 or for any part of every additional 25,000 rupees ...	100	0	200	0

Any lease of any land, house, or other real property at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium.	The same stamp as for a lease for a period exceeding one year.
Any lease of any land, house, or other real property stipulating for a rent granted in consideration of a fine or premium.	A stamp of value equal to the joint value of the stam for a Conveyance in of the fine and a the rent.

1870.

Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the Deed, Instrument, or Writing, per sheet	8 Annas.
Copy, attested or certified to be a true copy or made for the purpose of being given in evidence in any civil or revenue proceeding, or of any Will, Testament, or Codicil, or of any Probate, or Probate Copy of any Will or Codicil, or of any Letter of Administration, or of any confirmation of any Testament, Testamentary or Dative, or of any part thereof respectively	1 Rupee.
Copy or Extract of any Deed, *Instrument, or Writing,* annexed to any Deed, Instrument, or Writing.	The same stamp as the Deed, *Instrument, or Writing* from which the copy or extract is made, if of value not exceeding 8 Annas otherwise 8 Annas per sheet
Copy, authenticated or certified of any record, letter, account, statement report or other writing furnished to any individual from any Government Office per sheet	8 Annas.

Exemption

Copy of any paper which any public officer is required to make or furnish, for which a stamp is not specially required by this Schedule.

Counterpart of a Lease ..	The same stamp as for such lease.
Covenant.—Any separate Deed of Covenant made on the sale or mortgage of any immoveable property or of any right or interest therein (the same not being a Deed, chargeable with *ad valorem* duty under the head of Conveyance in this Schedule) for the conveyance, assignment surrender, or release of such property right, or interest, or for the title to or quiet enjoyment, freedom from incumbrance, or farther assurance of such property, right, or interest or otherwise by way of indemnity in respect of the same or for the production of the Title Deeds, or Muniment of Title relating thereto, or for all or any of those purposes	10 Rupees'
Deed of Gift or Dower whether to take effect on the instant or at a future period, determinate or indeterminate.	The same stamp as for a Conveyance.
Deed of any kind not otherwise charged or expressly exempted from stamp-duty by this Schedule.	1 Rupee.
Duplicate or counterpart of any Deed, Instrument, or Writing of any description whatever chargeable with duty under this Act not otherwise charged for or expressly exempted from stamp duty under this Schedule.	The same duty as the original when such duty does not exceed 8 Annas

If the duty chargeable on the original exceed 8 annas but do not exceed 10 rupees.	1 Rupee
If the duty chargeable on the original exceed 10 rupees but do not exceed 50 rupees	2 Rupees.
If the duty chargeable on the original exceed 50 rupees.	5 Rupees

Provided that such duplicate or counterpart stamp shall be affixed by the Collector of Stamp Revenue of the District upon the production of the original Deed bearing its proper stamp and not otherwise

Exchange—Any Deed, Instrument, or Writing whereby any real property shall be conveyed or surrendered in exchange for other property	The same stamp as for a Conveyance.
Lease—Any lease made in perpetuity, or for a term of years or period determinable with one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine or the like, if without rent	The same stamp as for a Conveyance, or Deed of Sale for a sum of the amount of such consideration.

Any lease of any land, house or other real property at a rent without any payment of any sum of money by way of fine or premium—	When the lease is for a period not exceeding one year		When the lease is for a period exceeding one year.	
	Rs	As.	Rs	As
Where the rent calculated for a whole year shall not exceed in value 24 rupees	0	4	0	8
Exceeding Rs 24 but not exceeding Rs 50	0	8	0	12
" 50 " " 100	0	12	1	0
" 100 " " 250	1	0	2	0
" 250 " " 500	2	0	4	0
" 500 " " 1,000	4	0	8	0
" 1,000 " " 2,000	8	0	16	0
" 2,000 " " 4,000	16	0	32	0
" 4,000 " " 6,000	24	0	48	0
" 6,000 " " 10,000	40	0	80	0
" 10,000 " " 25,000	100	0	200	0
" 25,000 " " 50,000	200	0	400	0
And for every additional 25,000 or for any part of every additional 25,000 rupees ...	100	0	200	0

Any lease of any land, house, or other real property at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium.	The same stamp as for a lease for a period exceeding one year.
Any lease of any land, house, or other real property stipulating for a rent granted in consideration of a fine or premium.	A stamp of value equal to the joint value of the stamps for a Conveyance in consideration of the fine and a lease for the rent.

-1870.

Where such copy may be made for the security *or use* of any person not being a party to, or taking any benefit or interest immediately under the Deed, Instrument, or Writing, per sheet	8 Annas.
Copy, attested or certified to be a true copy or made for the purpose of being given in evidence in any civil or revenue proceeding, or of any Will, Testament, or *Codicil, or of any Probate,* or *Probate* Copy of any Will or Codicil, or of any Letter of Administration, or of any confirmation of any Testament, Testamentary or Dative, or of any part thereof *respectively*	1 Rupee.
Copy or Extract of any Deed, Instrument, or Writing, annexed to any Deed, Instrument, or Writing.	The same stamp as the Deed, Instrument, or Writing from which the copy or extract is made, if of value not exceeding 8 Annas otherwise 8 Annas per sheet
Copy, authenticated or certified of any record, letter, account, statement report or other writing furnished to any individual from any Government Office per sheet	8 Annas.

Exemption

Copy of any paper which any public officer is required to make or furnish, for which a stamp is not specially required by this Schedule.

Counterpart of a Lease ..	The same stamp as for such lease.
Covenant—Any separate Deed of Covenant made on the sale or mortgage of any immoveable property or of any right or interest therein (the same not being a Deed, chargeable with *ad valorem* duty under the head of Conveyance in this Schedule) for the conveyance, assignment surrender, or release of such property right, or interest, or for the title to or quiet enjoyment, freedom from incumbrance, or further assurance of such property, right, or interest or otherwise by way of indemnity in respect of the same or for the production of the Title Deeds, or Muniment of Title relating thereto, or for all or any of those purposes	10 Rupees'
Deed of Gift or Dower whether to take effect on the instant or at a future period, determinate or indeterminate.	The same stamp as for a Conveyance.
Deed of any kind not otherwise charged or expressly exempted from stamp-duty by this Schedule.	1 Rupee.
Duplicate or counterpart of any *Deed*, Instrument, or Writing of any description whatever chargeable with duty under this Act not otherwise charged for or expressly exempted from stamp duty under this Schedule.	The same duty as the original when such duty does not exceed 8 Annas

If the duty chargeable on the original exceed 8 annas but do not exceed 10 rupees.	1 Rupee
If the duty chargeable on the original exceed 10 rupees but do not exceed 50 rupees.	2 Rupees.
If the duty chargeable on the original exceed 50 rupees.	5 Rupees

Provided that such duplicate or counterpart stamp shall be affixed by the Collector of Stamp Revenue of the District upon the production of the original Deed bearing its proper stamp and not otherwise

Exchange—Any Deed, Instrument, or Writing whereby any real property shall be conveyed or surrendered in exchange for other property	The same stamp as for a Conveyance.
Lease—Any lease made in perpetuity, or for a term of years or period determinable with one or more lives or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine or the like, if without rent	The same stamp as for a Conveyance, or Deed of Sale for a sum of the amount of such consideration.

Any lease of any land, house or other real property at a rent without any payment of any sum of money by way of fine or premium—	When the lease is for a period not exceeding one year.		When the lease is for a period exceeding one year.	
	Rs	As.	Rs	As
Where the rent calculated for a whole year shall not exceed in value 24 rupees ...	0	4	0	8
Exceeding Rs 24 but not exceeding Rs 50	0	8	0	12
" 50 " " 100	0	12	1	0
" 100 " " 250	1	0	2	0
" 250 " " 500	2	0	4	0
" 500 " " 1,000	4	0	8	0
" 1,000 " " 2,000	8	0	16	0
" 2,000 " " 4,000	16	0	32	0
" 4,000 " " 6,000	24	0	48	0
" 6,000 " " 10,000	40	0	80	0
" 10,000 " " 25,000	100	0	200	0
" 25,000 " " 50,000	200	0	400	0
And for every additional 25,000 or for any part of every additional 25,000 rupees ...	100	0	200	0

Any lease of any land, house, or other real property at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium.	The same stamp as for a lease for a period exceeding one year.
Any lease of any land, house, or other real property stipulating for a rent granted in consideration of a fine or premium	A stamp of value equal to the joint value of the stamps for a Conveyance in consideration of the fine and a lease for the rent.

32–1870.

Instrument	Duty
Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the Deed, Instrument, or Writing, per sheet	8 Annas.
Copy, attested or certified to be a true copy or made for the purpose of being given in evidence in any civil or revenue proceeding, or of any Will, Testament, or Codicil, or of any Probate, or Probate Copy of any Will or Codicil, or of any Letter of Administration, or of any confirmation of any Testament, Testamentary or Dative, or of any part thereof respectively	1 Rupee.
Copy or Extract of any Deed, Instrument, or Writing, annexed to any Deed, Instrument, or Writing	The same stamp as the Deed, Instrument, or Writing from which the copy or extract is made, *if of value not exceeding* 8 Annas otherwise 8 Annas per sheet
Copy, authenticated or certified of any record, letter, account, statement report or other writing furnished to any individual from any Government Office per sheet	8 Annas.

Exemption

Copy of any paper which any public officer is required to make or furnish, for which a stamp is not expressly required by this Schedule.

Instrument	Duty
Counterpart of a Lease	The same stamp as for such lease
Covenant—Any separate Deed of Covenant made on the sale or mortgage of any immoveable property or of any right or interest therein (the same not being a Deed, chargeable with *ad valorem* duty under the head of Conveyance in this Schedule) for the conveyance, assignment surrender, or release of such property, right, or interest, or for the title to or quiet enjoyment, freedom from incumbrance, or farther assurance of such property, right, or interest or otherwise by way of indemnity in respect of the same or for the production of the Title Deeds, or Muniment of Title relating thereto, or for all or any of those purposes	10 Rupees
Deed of Gift or Dower whether to take effect on the instant or at a future period, determinate or indeterminate.	The same stamp as for a Conveyance.
Deed of any kind not otherwise charged or expressly exempted from stamp-duty by this Schedule.	1 Rupee.
Duplicate or counterpart of any Deed, Instrument, or Writing of any description whatever chargeable with duty under this Act not otherwise charged for or expressly exempted from stamp duty under this Schedule.	The same duty as the original when such duty does not exceed 8 Annas

real property at a rent without any payment of any sum of money by way of fine or premium—

	When the lease is for a period not exceeding one year		When the lease is for a period exceeding one year	
	Rs	As.	Rs	As.
Where the rent calculated for a whole year shall not exceed in value 24 rupees —	0	4	0	8
Exceeding Rs 24 but not exceeding Rs 50	0	8	0	12
" 50 " " 100	0	12	1	0
" 100 " " 250	1	0	2	0
" 250 " " 500	2	0	4	0
" 500 " " 1,000	4	0	8	0
" 1,000 " " 2,000	8	0	16	0
" 2,000 " " 4,000	16	0	32	0
" 4,000 " " 6,000	24	0	48	0
" 6,000 " " 10,000	40	0	80	0
" 10,000 " " 25,000	100	0	200	0
" 25,000 " " 50,000	200	0	400	0
And for every additional 25,000 or for any part of every additional 25,000 rupees ...	100	0	200	0

Any lease of any land, house, or other real property at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium.	The same stamp as for a lease for a period exceeding one year.
Any lease of any land, house, or other real property stipulating for a rent granted in consideration of a fine or premium.	A stamp of value equal to the joint value of th[...] a Conveyance [...] for of the fine [...] the rent.

—1870.

General Exemptions

Any Deed, Instrument, or Writing of any kind made or executed by or on behalf of the Government by any Government Board, Commission, Court, Officer or Agent

Note.—The foregoing exemption does not extend to any Deed, Instrument, or Writing executed by a Court of Wards, Local Agent, or officer acting under the authority of any such Court or Agent, or by a Municipal Commissioner, or by any Administrator-General or a Receiver appointed by any Court, neither does it extend to a sale made for the recovery of an arrear of revenue or rent, or in satisfaction of a decree or order of Court, in any of which cases the purchaser shall be required to pay, along with the purchase-money, the price of the requisite stamp, or also provide such stamp, and shall receive from the officer conducting the sale a Deed of Sale executed on the proper stamp.

Will Testament and the like, together with a Deed merely declaratory of trust or appointment or otherwise, in execution of powers, or pursuant to any previous Settlement, Deed, or Will

Note.—(a) Any Deed, Instrument, or Writing required by the foregoing Schedule to be stamped, may be written on one or more stamps, if the value of the stamps used amount to the value required by the Schedule.

(b) When of several Deeds, Instruments, or Writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In any case, however, where there are more Deeds than one, every other Deed than the principal requires the same stamp as the principal Deed if of value not exceeding eight rupees (which shall be the maximum stamp for collateral Deeds), and every such collateral Deed shall specify by its contents which other is the principal Deed by which the conveyance has been effected, certifying that it is executed on the proper stamp

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ACT XVIII OF 1869

In force {from 1st Jan. 1870 up to 1st Apr., 1879

SCHEDULE I

Instruments chargeable with ad valorem Stamp-duties.

	If drawn singly		If drawn in duplicate, the stamp for each part.	
Policy of insurance—	Rs.	As.	Rs.	As.
When the amount insured does not exceed Rs. 1,000	0	4	0	2
And for every further sum of Rs. 1,000 insured or for every part	"		0	2

Mortgage-Deed when possession of the property comprised therein is not given by the mortgagor at the the time of execution	The stamp duty with which a Bond for the amount secured is chargeable (No 5)
Instrument of further charge on such property, whether by endorsement or otherwise	Ditto ditto.
Assignment of any interest secured by a Bond or Mortgage-Deed—	
(a) When the amount of such interest does not exceed Rs 3,000.	The stamp-duty with which a Bond for such amount is chargeable (No 5).
(b) In any other case	16 Rupees.
Settlement	The stamp duty with which a Bond for the amount or value of the property thereby settled is chargeable (No 5).

Conveyance—

Mortgage-Deed when possession of the property comprised therein is given by the mortgagor at the time of execution—

Instrument of further charge on such property, whether by endorsement or otherwise—

	Rs	As
When the amount paid or secured does not exceed Rs. 50	0	8
When such amount exceeds Rs. 50 but does not exceed Rs. 100	1	0
For every Rs 100 or part thereof in excess of Rs 100 up to Rs 1,000.	1	0
For every Rs. 500 or part thereof in excess of Rs. 1,000 up to Rs. 10,000	5	0
For every Rs. 1,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000.	5	0
For every Rs 10,000 or part thereof in excess of Rs. 30,000 up to Rs. 100,000.	50	0
For every Rs. 20,000 or part thereof in excess of Rs. 100,000	70	0

Instrument of exchange or partition of immoveable property when money is paid for equality of exchange or partition	The stamp-duty with which a Conveyance for the amount so paid is chargeable (No. 16), in addition to the stamp-duty with which an instrument of exchange of immoveable property or a Partition Deed is chargeable under Schedule II

0—1879.

Lease—	
(*a*) Where the lease is expressed to be for a term of less than one year	The stamp-duty with which a Bond (No 5) for the total amount payable under such lease is chargeable.
(*b*) Where the lease is expressed to be for a term of not less than one year, but not more than three years	The stamp-duty with which a Bond for the total amount payable under such lease during the first year of the term is chargeable
(*c*) Where the lease is expressed to be for a term exceeding three years, or where no term is expressed	The stamp duty with which a Conveyance for the total amount payable under such lease during the first year of the term is chargeable.
(*d*) Where the lease is granted in consideration of a fine or premium, and where no rent is reserved,	The stamp-duty with which a Conveyance for the amount so paid is chargeable.
(*e*) Where the lease is granted in consideration of a fine or premium and also of a rent,	The stamp-duty with which a Conveyance for the amount of the fine or premium is chargeable, in addition to the stamp duty with which the lease would be chargeable in case no such fine or premium had been paid.
Surrender of lease—	
(*a*) Where the amount of stamp-duty chargeable on the lease does not exceed Rs. 16	The stamp-duty with which the lease is chargeable (No. 19).
(*b*) In any other case	Sixteen rupees.

Award—	
(*a*) Where the amount or value of the property in dispute expressed in such award does not exceed Rs. 500.	Eight annas
(*b*) Where such amount or value exceeds Rs 500, or where no amount or value is expressed in the award	One rupee.
Copy, duplicate, or extract, attested to be a true copy, duplicate or extract—	
(*a*) If the duty chargeable on the original does not exceed Rs. 5; or if no duty is chargeable on the original.	Eight annas.
(*b*) If the duty chargeable on the original exceeds Rs 5, but does not exceed Rs. 20.	One rupee

(c) If such duty exceeds Rs 20, but does not exceed Rs. 50	Two rupees
(d) If such duty exceeds Rs. 50.	Four rupees

SCHEDULE II.

Instruments chargeable with fixed stamp duties

Any Agreement or Memorandum of an Agreement not otherwise provided for by this Act Provided that where two or more letters are offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped as an agreement	Eight annas
Power-of-Attorney to present for registration—	
(a) A single instrument	Ditto.
(b) Any number of instruments required for the completion of a single transaction.	Ditto.
Counterpart of any instrument chargeable with stamp duty under this Act rovided that the counterpart shall not be available unless the Collector or such other officer as he may authorize in that behalf shall certify that the proper stamp-duty on the original instrument has been paid. Such certificate shall be endorsed on the counterpart on the same being produced together with the original instrument, and on the whole being duly executed and duly stamped in other respects.	One rupee.
Instrument of dissolution of partnership	Ditto.
Power-of Attorney for the performance of a single act when the value of the matter to be dealt with does not exceed five hundred rupees	Ditto.
Power of-Attorney for the performance of a single act when the value of the matter to be dealt with exceeds five hundred rupees.	Two rupees.
Bond or Mortgage-Deed executed as a collateral security for the performance of any act, where such performance is secured by some instrument previously executed on stamped paper in accordance with the law in force in British India at the time of its execution.	Ditto.
Instrument of co-partnership	Four rupees.
Re-conveyance of mortgaged property, when the original Mortgage Deed has been stamped in accordance with the law in force in British India at the time of its execution	Ditto.
Release	Eight rupees.
Instrument purporting to confer an authority to adopt.	Ditto.
Power-of-Attorney not otherwise provided for by this Schedule	Ditto

1899.

Description of Instrument	Proper Stamp-duty
Bond or Mortgage-Deed executed by way of security for the due execution of an office, or to account for money received by virtue thereof—	
(*a*) When the amount secured does not exceed Rs. 1,000.	The same duty as a Bond (No 13).
(*b*) In any other case ...	Five rupees
Certificate of Sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue-officer	The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase money only
Conveyance, not being a **Transfer**, mentioned in No 60	
When the amount of the consideration for such conveyance as set forth therein does not exceed Rs 50	Eight annas
When it exceeds Rs 50 but does not exceed Rs 100 ...	One rupee,
For every Rs 100 or part thereof in excess of Rs 100 up to Rs 1,000	Ditto
And for every Rs 500 or part thereof in excess of Rs 1 000	Five rupees
See *Exemptions, Schedule II* (*Nos* 5 & 17).	
Co-Partnership—See *Instrument, No* 32	
Copy or Extract, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court fees—	
(*a*) If the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee.	Eight annas
(*b*) in any other case ...	One rupee.
See *Exemptions, Schedule II* (*Nos* 9 & 10)	
Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid—	
(*a*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.

(*b*) In any other case	One rupee.
Declaration of any trust of or concerning any property, when made by any writing not being a Will ...	Fifteen rupees
Dissolution of Partnership.—See *Instrument, No.* 33	
Duplicate.—See *Counterpart, No.* 23.	
Entry as an Advocate, Vakil or Attorney on the roll of any High Court in exercise of powers conferred on such Court by Letters Patent "or by the Legal Practitioners' Act, 1884" (by Act IX of 1884, s. 10 (1)—	
In the case of an Advocate or Vakil	Five hundred rupees
In the case of an Attorney ...	Two hundred and fifty rupees
See *Exemption, Schedule II* (*No.* 11)	
Exchange.—See *Instrument, No* 35	
Extract.—See *Copy, No* 22	
Further Charge.—See *Instrument, No.* 30	
Gift.—See *Instrument, No* 36	
Instrument imposing a further charge on mortgaged property—	
(*a*) When the original mortgage is one of the discription referred to in No 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No 21) for a consideration equal to the amount secured by such instrument
(*b*) When such mortgage is one of the description referred to in No. 44, clause (*b*) of this schedule.	The same duty as a Bond (No 18) for the amount secured by such instrument.
Instrument of Apprenticeship, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No 9 of this schedule).	Five rupees
See *Exemption, Schedule* II [*No.* 12 (*c*)].	
Instrument of Co-Partnership ..	Ten rupees
Instrument of Dissolution of Partnership	Five rupees.

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Bond or Mortgage-Deed executed by way of security for the due execution of an office, or to account for money received by virtue thereof—	
(*a*) When the amount secured does not exceed Rs. 1,000	The same duty as a Bond (No 13).
(*b*) In any other case ..	Five rupees
Certificate of Sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue-officer	The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase money only
Conveyance, not being a Transfer, mentioned in No 60	
When the amount of the consideration for such conveyance as set forth therein does not exceed Rs 50	Eight annas
When it exceeds Rs 50 but does not exceed Rs 100 —	One rupee.
For every Rs 100 or part thereof in excess of Rs 100 up to Rs 1,000	Ditto
And for every Rs 500 or part thereof in excess of Rs 1,000	Five rupees

See *Exemptions Schedule II* (*Nos*. 5 — 17).

Co-Partnership —See *Instrument*, *No* 31

Copy or Extract, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court fees—	
(*a*) If the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee.	Eight annas
(*b*) in any other case .	One rupee

See *Exemptions*, *Schedule II* (*Nos* 9 & 10)

Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid—	
(*a*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.

(*b*) In any other case	One rupee.
Declaration of any trust of or concerning any property, when made by any writing not being a Will	Fifteen rupees
Dissolution of Partnership —See *Instrument, No.* 33	
Duplicate.—See *Counterpart, No.* 23.	
Entry as an Advocate, Vakil or Attorney on the roll of any High Court in exercise of powers conferred on such Court by Letters Patent "or by the Legal Practitioners' Act, 1884" (by Act IX of 1884, s 10 (1)—	
In the case of an Advocate or Vakil	Five hundred rupees
In the case of an Attorney ...	Two hundred and fifty rupees
See *Exemption, Schedule II* (*No.* 11)	
Exchange.—See *Instrument, No* 35	
Extract.—See *Copy, No* 22.	
Further Charge.—See *Instrument, No.* 30	
Gift.—See *Instrument, No* 36	
Instrument imposing a further charge on mortgaged property—	
(*a*) When the original mortgage is one of the discription referred to in No 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No 21) for a consideration equal to the amount secured by such instrument
(*b*) When such mortgage is one of the description referred to in No. 44 clause (*b*) of this schedule.	The same duty as a Bond (No. 18) for the amount secured by such Instrument
Instrument of Apprenticeship, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No 9 of this schedule).	Five rupees
See *Exemption, Schedule* II [*No* 12 (*c*)].	
Instrument of Co-Partnership ..	Ten rupees
Instrument of Dissolution of Partnership	Five rupees.

***Instruments* of Divorce**, that is to say, any *instrument* by which any person effects the dissolution of his marriage	One rupee
Instrument of Exchange of any property	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument
Instrument of Gift (other than a Settlement or Will) —	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
Instrument of Partition	The same duty as a Bond (No. 13) for the amount of the value of the property as set forth in such instrumen
Instrument (other than a Will) conferring or purporting to confer an Authority to Adopt	Ten rupees.

Insurance —see *Policy*, No. 49

Lease—

( ) Where by such lease the rent is fixed and no premium is paid or delivered, and such lease does not purport to be for any definite term	The same duty as a (*Conveyance* (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long
( ) Where the lease is granted for a fine or premium, and where no rent is reserved	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
(*d*) Where the lease is granted for a fine or premium in addition to rent reserved	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered

Provided that when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas

See *Agreement to Lease* (*No.* 4)

See *Exemptions, Schedule II* (*No* 13)

Memorandum of Association of a Company	Fifteen rupees.
Mortgage-Deed not provided for by No 14, No. 15, No 29 or No 55 of this schedule—	
(*a*) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
(*b*) When at the time of execution possession is not given or agreed to be given as aforesaid	The same duty as a Bond (No. 13) for the amount secured by such deed
See *Exemptions, Schedule II* [*No.* 12 & *No* 14 (*b*)]	

Partition.—See *Instrument, No* 37

Partnership.—See *Instrument, No* 32 & 33.

Policy of Insurance.—

	If drawn singly.			If drawn in duplicate for each part.		
(*c*) In the case of any other insurance "except such a re assurance as is described in division (*d*) of this article:" (By Act VI of 1894)—	Rs.	A.	P.	Rs	A	P.
when the amount insured does not exceed Rs. 1,000	0	6	0	0	3	0
and for every further sum of Rs 1,000 or part thereof in excess of Rs. 1,000.	0	6	0	0	3	0

Power-of-Attorney not being a Proxy chargeable under No. 51—	
(*a*) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas
(*b*) When authorizing one person or more to act in a single transaction other than that mentioned in (*a*).	On

Instruments of Divorce, that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee
Instrument of Exchange of any property	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument
Instrument of Gift (other than a Settlement or Will)	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument
Instrument of Partition	The same duty as a Bond (No. 13) for the amount of the value of the property as set forth in such instrument.
Instrument (other than a Will) conferring or purporting to confer an **Authority to Adopt**	Ten rupees.
Insurance.—See *Policy*, No. 49	
Lease—	
(*b*) Where by such lease the rent is fixed and no premium is paid or delivered, and such lease does not purport to be for any definite term	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(*c*) Where the lease is granted for a fine or premium, and where no rent is reserved	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
(*d*) Where the lease is granted for a fine or premium in addition to rent reserved.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered.

Provided that when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas. 1879–18[illegible]

See *Agreement to Lease* (No 4)

See *Exemptions, Schedule II* (No 13)

Memorandum of Association of a Company	Fifteen rupees.
Mortgage-Deed not provided for by No 14, No. 15, No 29 or No 55 of this schedule—	
(a) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given.	The same duty as a Conveyance (No 21) for a consideration equal to the amount secured by such deed.
(b) When at the time of execution possession is not given or agreed to be given as aforesaid	The same duty as a Bond (No. 13) for the amount secured by such deed.
See *Exemptions, Schedule II* [No. 12 & No 14 (b)]	

Partition.—See *Instrument, No* 37

Partnership.—See *Instrument, No* 31 & 33.

Policy of Insurance.—

	If drawn singly.	If drawn in duplicate for each part.
(c) In the case of any other insurance "except such a re assurance as is described in division *(d)* of this article" (By Act VI of 1894)—	Rs. A. P.	Rs A P.
when the amount insured does not exceed Rs. 1,000	0 6 0	0 3 0
and for every further sum of Rs 1,000 or part thereof in excess of Rs. 1,000	0 6 0	0 3 0

Power-of-Attorney not being a Proxy chargeable under No. 51—	
(a) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas
(b) When authorizing one person or more to act in a single transaction other than that mentioned in (a)	One rupee.

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(c) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally.	Five rupees.
(d) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	Ten rupees
(e) In any other case	One rupee for each person authorized
Explanation.—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.	
Receipt for any money or other property the amount or value of which exceeds twenty rupees.	One anna
See *Exemptions, Schedule II* (*No.* 15)	
Reconveyance of Mortgaged property—	
(a) If the consideration for which the property was mortgaged does not exceed Rs 1,000.	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the reconveyance
(b) In any other case	Ten rupees
Release, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property—	
(a) If the amount or value of the claim does not exceed Rs 1,000	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
(b) In any other case	Five rupees
Revocation of any Trust of or concerning any property by any instrument other than a will.	Ten rupees
Settlement	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
[**Share Warrants.**—See *Act VI*, 1882]	
Specification.—See *Petition, No.* 48.	
Surrender of Lease—	
(a) When the duty with which the lease is chargeable does not exceed five rupees	The duty with which such lease is chargeable
(b) In any other case	Five rupees

See *Exemption, Schedule II (No. 16).*

Transfer—	
(a) Of shares in a Company or Association	One-quarter of the duty payable on a Conveyance (No 21).
(b) Of any interest secured by a Bond (Lease), Mortgage Deed or Policy of Insurance—	
1 If the duty on such Bond (Lease), Mortgage Deed or Policy does not exceed five rupees	The duty with which such Bond (Lease), Mortgage, Deed or Policy of Insurance is chargeable.
2. In any other case — ...	Five rupees.
(c) Of any property under the Administrator General's Act, 1874, section 31.	Ten rupees.
(d) Of any trust-property from one trustee to another trustee without consideration.	Five rupees.
See *Exemptions, Schedule* II *(No 17)*	
Transfer of Lease by way of assignment and not by way of under lease (By Act XIII of 1897).	The same duty as a Conveyance (No. 21)
Trust —See *Declaration, No* 25	
See *Revocation, No.* 56	

SCHEDULE II

INSTRUMENTS EXEMPTED FORM STAMP DUTY.

Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose

Entry—

(a) of an advocate, vakil or attorney on the roll of any High Court when he has previously been enrolled in a High Court.

Receipt—

(a) endorsed on or contained in any instrument duly stamped, or exempted under this Schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest or annuity or other periodical payment thereby secured.

(b) for any payment of money without consideration ;

TABLES II & III.

Table II *showing the stamp-duty calculated on* Bonds (Art 15) *and other instruments similarly chargeable, and*

Table III *showing the stamp-duty calculated on* Conveyances (Art 23), *and other instruments similarly chargeable, up to half a lakh*

				TABLE II	TABLE III
				Rs. As.	Rs. As.
Where the amount or value does not exceed			Rs 10	0 2	
Where it exceeds Rs	10	but does not exceed	50	0 4	0 8
Do	50	do.	100	0 8	1 0
Do	100	do	200	1 0	2 0
Do	200	do.	300	1 8	3 0
Do	300	do	400	2 0	4 0
Do	400	do.	500	2 8	5 0
Do.	500	do	600	3 0	6 0
Do	600	do	700	3 8	7 0
Do	700	do	800	4 0	8 0
Do	800	do	900	4 8	9 0
Do	900	do	1 000	5 0	10 0
Do	1 000	do	1 500	7 8	15 0
Do	1 500	do.	2 000	10 0	20 0
Do	2 000	do	2 500	12 8	25 0
Do	2 500	do	3 000	15 0	30 0
Do	3 000	do	3 500	17 8	35 0
Do	3 500	do	4 000	20 0	40 0
Do.	4 000	do.	4 500	22 8	45 0
Do.	4 500	do.	5 000	25 0	50 0
Do.	5 000	do	5 500	27 8	55 0
Do.	5 500	do	6 000	30 0	60 0
Do	6 000	do	6 500	32 8	65 0
Do.	6 500	do.	7 000	35 0	70 0
Do.	7 000	do.	7 500	37 8	75 0
Do.	7 500	do	8 000	40 0	80 0
Do	8 000	do.	8 500	42 8	85 0
Do	8 500	do	9 000	45 0	90 0

				TABLE II	TABLE III
	Rs		Rs.	Rs. As	Rs As
Where it exceeds	9 000	but does not exceed	9 500	47 8	95 0
Do	9.500	do.	10.000	50 0	100 0
Do.	10.000	do.	10.500	52 8	105 0
Do	10.500	do	11.000	55 0	110 0
Do	11.000	do	11.500	57 8	115 0
Do	11.500	do.	12.000	60 0	120 0
Do	12.000	do.	12.500	62 8	125 0
Do.	12 500	do.	13.000	65 0	130 0
Do	13 000	do.	13 500	67 8	135 0
Do	13.500	do	14.000	70 0	140 0
Do	14 000	do.	14.500	72 8	145 0
Do.	14.500	do.	15.000	75 0	150 0
Do	15.000	do.	15 500	77 8	155 0
Do	15 500	do.	16 000	80 0	160 0
Do.	16 000	do.	16.500	82 8	165 0
Do.	16 500	do	17.000	85 0	170 0
Do.	17 000	do	17.500	87 8	175 0
Do.	17 500	do	18.000	90 0	180 0
Do.	18 000	do.	18 500	92 8	185 0
Do.	18.500	do.	19 000	95 0	190 0
Do.	19 000	do	19 500	97 8	195 0
Do.	19 500	do	20 000	100 0	200 0
Do.	20 000	do.	20 500	102 8	205 0
Do	20 500	do	21.000	105 0	210 0
Do.	21.000	do.	21 500	107 8	215 0
Do.	21.500	do.	22 000	110 0	220 0
Do	22.000	do.	22.500	112 8	225 0
Do.	22 500	do.	23.000	115 0	230 0
Do.	23 000	do.	23.500	117 8	235 0
Do	23.500	do	24 000	120 0	240 0
Do	24 000	do.	24 500	122 8	245 0
Do.	24 500	do.	25.000	125 0	250 0
Do.	25 000	do.	25.500	127 8	255 0
Do.	25.500	do.	26 000	130 0	260 0
Do.	26.000	do	25.500	132 8	

	Rs.		Rs.	TABLE II Rs. As.	TABLE III. Rs As.
Where it exceeds	26,500	but does not exceed	27,000	135 0	270 0
Do.	27,000	do	27,500	137 8	275 0
Do	27,500	do.	28,000	140 0	280 0
Do.	28,000	do.	28,500	142 8	285 0
Do.	28,500	do	29,000	145 0	290 0
Do.	29,000	do.	29,500	147 8	295 0
Do	29,500	do.	30,000	150 0	300 0
Do.	30,000	do	30,500	152 8	305 0
Do.	30,500	do	31,000	155 0	310 0
Do.	31,000	do.	31,500	157 8	315 0
Do.	31,500	do.	32,000	160 0	320 0
Do.	32,000	do.	32,500	162 8	325 0
Do.	32,500	do.	33,000	165 0	330 0
Do.	33,000	do	33,500	167 8	335 0
Do	33,500	do	34,000	170 0	340 0
Do	34,000	do	34,500	172 8	345 0
Do.	34,500	do.	35,000	175 0	350 0
Do.	35,000	do.	35,500	177 8	355 0
Do	35,500	do.	36,000	180 0	360 0
Do.	36,000	do	36,500	182 8	365 0
Do.	36,500	do.	37,000	185 0	370 0
Do	37,000	do	37,500	187 8	375 0
Do	37,500	do	38,000	190 0	380 0
Do	38,000	do	38,500	192 8	385 0
Do.	38,500	do	39,000	195 0	390 0
Do.	39,000	do	39,500	197 8	395 0
Do.	39,500	do.	40,000	200 0	400 0
Do.	40,000	do.	40,500	202 8	405 0
Do.	40,500	do	41,000	205 0	410 0
Do	41,000	do.	41,500	207 8	415 0
Do.	41,500	do	42,000	210 0	420 0
Do.	42,000	do.	42,500	212 8	425 0
Do.	42,500	do.	43,000	215 0	430 0
Do.	43,000	do.	43,500	217 8	435 0
Do.	43,500	do.	44,000	220 0	440 0

	Rs		Rs	TABLE II. Rs. As.	TABLE III Rs As.
Where it exceeds	44,000	but does not exceed	44 500	222 8	445 0
Do.	44,500	do.	45,000	225 0	450 0
Do	45,000	do	45,500	227 8	455 0
Do.	45 500	do.	46,000	230 0	460 0
Do	46 000	do.	46,500	232 8	465 0
Do	46,500	do	47,000	235 0	470 0
Do.	47 000	do	47,500	237 8	475 0
Do	47,500	do	48,000	240 0	480 0
Do	48,000	do	48,500	242 8	485 0
Do	48,500	do	49 000	245 0	490 0
Do.	49 000	do	49 500	247 8	495 0
Do	49,500	do	50 000	250 0	500 0
and for every Rs. 500 or part thereof		in excess of Rs	50 000	2 8	5 0

TABLE IV

Showing the stamp-duty calculated on a Mortgage-Deed *under Art* 40 *(c) up to* Rs 60,000.

				Rs As.
Where the sum secured does not exceed			Rs 1,000	0 8
Where it exceeds	Rs 1,000	but does not exceed	2,000	1 0
Do.	2,000	do.	3 000	1 8
Do.	3,000	do	4 000	2 0
Do.	4,000	do	5,000	2 8
Do	5 000	do.	6,000	3 0
Do	6,000	do.	7,000	3 8
Do.	7,000	do.	8,000	4 0
Do.	8,000	do.	9,000	4 8
Do.	9,000	do.	10 000	5 0
Do	10 000	do	11,000	5 8
Do	11,000	do.	12,000	6 0
Do.	12,000	do.	13,000	6 8
Do.	13,000	do.	14,000	7 0
Do.	14,000	do	15 000	7 8

	Rs		Rs	Rs. As.
Where it exceeds	15 000	but does not exceed	16 000	8 0
Do.	16,000	do.	17 000	8 8
Do.	17 000	do	18,000	9 0
Do	18 000	do	19 000	9 8
Do.	19,000	do	20 000	10 0
Do.	20 000	do	21 000	10 8
Do	21,000	do	22 000	11 0
Do	22 000	do	23 000	11 8
Do	23 000	do	24 000	12 0
Do	24 000	do	25 000	12 8
Do	25 000	do.	26 000	13 0
Do	26 000	do	27 000	13 8
Do	27 000	do	28 000	14 0
Do	28 000	do.	29 000	14 8
Do	29 000	do	30 000	15 0
Do	30 000	do	31 000	15 8
Do	31 000	do	32 000	16 0
Do	32 000	do	33 000	16 8
Do	33 000	do	34 000	17 0
Do	34 000	do	35 000	17 8
Do	35 000	do	36 000	18 0
Do	36 000	do.	37 000	18 8
Do	37 000	do	38 000	19 0
Do	38 000	do	39 000	19 8
Do	39 000	do	40 000	20 0
Do.	40 000	do	41 000	20 8
Do.	41 000	do	42 000	21 0
Do.	42 000	do	43 000	21 8
Do	43 000	do	44 000	22 0
Do	44 000	do	45 000	22 8
Do	45 000	do	46 000	23 0
Do	46 000	do	47 000	23 8
Do.	47 000	do.	48 000	24 0
Do.	48 000	do	49 000	24 8
Do	49 000	do.	50 000	25 0
Do.	50 000	do.	51 000	25 8

	Rs		Rs	Rs. As.
Where it exceeds	51,000	but does not exceed	52 000	26 0
Do	52,000	do	53 000	26 8
Do.	53,000	do.	54 000	27 0
Do	54,000	do	55 000	27 8
Do.	55 000	do	56,000	28 0
Do.	56 000	do	57,000	28 8
Do	57 000	do	58 000	29 0
Do	58 000	do	59 000	29 8
Do	53 000	do	60 000	30 0
and for every Rs. 1,000 or part thereof in excess of Rs 60 000				0 8

TABLE V

Showing the stamp-duty calculated on the Mortgage of a Crop *under Art* 41, cl (*a*), *up to Rs.* 8,000

				Rs As.
Where the sum secured does not exceed			Rs 200	0 1
Where it exceeds	Rs. 200	but does not exceed	400	0 2
Do.	430	do	600	0 3
Do	600	do	800	0 4
Do.	800	do	1,000	0 5
Do	1,000	do	1,200	0 6
Do.	1,200	do.	1,400	0 7
Do.	1,400	do	1,600	0 8
Do	1,600	do	1,200	0 9
Do.	1,800	do	2 000	0 10
Do.	2 000	do	2,200	0 11
Do.	2,200	do	2,400	0 12
Do	2,400	do	2 600	0 13
Do.	2 600	do.	2 800	0 14
Do	2,800	do.	3 000	0 15
Do	3 000	do.	3 200	1 0
Do	3,200	do	3 400	1 1
Do	3,400	do.	3 600	1 2
Do.	3,600	do	3 800	1 3

	Rs.		Rs.	Rs. As.
Where it exceeds	15 000	but does not exceed	16 000	8 0
Do	16,000	do.	17 000	8 8
Do.	17,000	do	18,000	9 0
Do	18 000	do	19 000	9 8
Do	19 000	do.	20 000	10 0
Do.	20 000	do	21 000	10 8
Do	21 000	do.	22 000	11 0
Do.	22 000	do	23 000	11 8
Do	23 000	do	24 000	12 0
Do	24 000	do	25 000	12 8
Do	25 000	do.	26 000	13 0
Do.	26 000	do.	27,000	13 8
Do	27 000	do	28,000	14 0
Do	28 000	do.	29 000	14 8
Do	29 000	do.	30 000	15 0
Do	30 000	do	31 000	15 8
Do.	31 000	do	32 000	16 0
Do	32 000	do	33 000	16 8
Do	33 000	do	34 000	17 0
Do	34 000	do	35 000	17 8
Do	35 000	do	36 000	18 0
Do.	36 000	do.	37 000	18 8
Do	37 000	do	38 000	19 0
Do	38 000	do	39 000	19 8
Do	39 000	do	40 000	20 0
Do.	40 000	do	41 000	20 8
Do	41,000	do	42 000	21 0
Do	42 000	do	43 000	21 8
Do.	43 000	do.	44 000	22 0
Do.	44 000	do.	45 000	22 8
Do	45 000	do.	46 000	23 0
Do	46 000	do	47 000	23 8
Do.	47 000	do.	48 000	24 0
Do.	48 000	do	49 000	24 8
Do	49,000	do.	50 000	25 0
Do.	50 000	do.	51 000	25 8

	Rs		Rs	Rs.	As.
Where it exceeds	51,000	but does not exceed	52 000	[illegible]	8
Do	52,000	do	53 000	[illegible]	8
Do.	53,000	do	54 000	[illegible]	8
Do	54,000	do.	55,000	27	8
Do.	55,000	do	56,000	[illegible]	8
Do	56 000	do	57,000	[illegible]	8
Do	57 000	do	58 000	[illegible]	8
Do	58 000	do	59 000	[illegible]	8
Do	59 000	do	60 000	[illegible]	8
and for every Rs. 1,000 or part thereof in excess of Rs 60 000				[illegible]	8

TABLE V

Showing the stamp-duty calculated on the Mortgage of a Crop, *under Art* 41, cl (*a*), *up to Rs* 8,000.

				Rs.	As.
Where the sum secured does not exceed			Rs 200	0	1
Where it exceeds	Rs 200	but does not exceed	400	0	2
Do.	400	do	600	0	3
Do	600	do	800	0	4
Do.	800	do	1 000	0	5
Do	1,000	do	1,200	0	6
Do.	1,200	do.	1,400	0	7
Do.	1,400	do	1 600	0	8
Do	1,600	do	1,800	0	9
Do.	1,800	do	2 000	0	10
Do.	2 000	do	2 200	0	11
Do.	2 200	do	2,400	0	12
Do	2,400	do.	2 600	0	13
Do	2 600	do.	2 800	0	14
Do	2,800	do.	3 000	0	15
Do	3 000	do.	3 200	1	0
Do	3 200	do	3 400	1	1
Do	3 400	do	3 600		
Do.	3,600	do	3 [illegible]		

	Rs		Rs	Rs. As.
Where it exceeds	3,800	but does not exceed	4,000	1 4
Do.	4,000	do.	4 200	1 5
Do.	4 200	do.	4 400	1 6
Do	4,400	do.	4 600	1 7
Do	4 600	do.	4 800	1 8
Do.	4 800	do	5 000	1 9
Do	5 000	do	5,200	1 10
Do	5 200	do.	5 400	1 11
Do	5,400	do	5 600	1 12
Do.	5 600	do	5,800	1 13
Do.	5 800	do.	6 000	1 14
Do	6 000	do	6,200	1 15
Do.	6,200	do	6 400	2 0
Do.	6 400	do	6 600	2 1
Do	6 600	do	6 800	2 2
Do.	6 800	do.	7 000	2 3
Do	7,000	do.	7 200	2 4
Do	7,200	do.	7 400	2 5
Do.	7 400	do	7 600	2 6
Do	7 600	do	7 800	2 7
Do.	7 800	do	8 000	2 8
and for every Rs. 200 or part thereof in excess of Rs. 8,000				0 1

TABLE VI.

Showing the stamp duty calculated on the Mortgage of a Crop *under Art* 41, cl (*b*), *up to Rs* 4,000

				Rs. As.
Where the sum secured does not exceed			Rs. 100	0 2
Where it exceeds Rs.	100	but does not exceed	200	0 4
Do.	200	do	300	0 6
Do.	300	do	400	0 8
Do.	400	do.	500	0 10
Do.	500	do.	600	0 12
Do.	600	do	700	0 14

	Rs		Rs	Rs. As.
Where it exceeds	700	but does not exceed	800	1 0
Do	800	do.	900	1 2
Do	900	do.	1,000	1 4
Do.	1,000	do	1,100	1 6
Do	1,100	do	1,200	1 8
Do	1,200	do	1,300	1 10
Do	1,300	do	1,400	1 12
Do	1,400	do	1,500	1 14
Do	1 500	do	1 600	2 0
Do	1 600	do	1,700	2 2
Do	1,700	do	1,800	2 4
Do	1,800	do	1,900	2 6
Do.	1,900	do	2,000	2 8
Do	2,000	do	2,100	2 10
Do.	2,100	do	2,200	2 12
Do	2,200	do.	2,300	2 14
Do.	2 300	do.	2,400	3 0
Do	2,400	do.	2 500	3 2
Do.	2,500	do.	2,600	3 4
Do.	2 600	do.	2,700	3 6
Do	2,700	do.	2,800	3 8
Do.	2,800	do.	2,900	3 10
Do.	2,900	do.	3 000	3 12
Do.	3 000	do.	3,100	3 14
Do.	3,100	do.	3,200	4 0
Do	3,200	do.	3 300	4 2
Do	3,300	do	3,400	4 4
Do	3,400	do.	3,500	4 6
Do	3,500	do.	3,600	4 8
Do.	3 600	do	3,700	4 10
Do.	3,700	do.	3,800	4 12
Do	3 800	do.	3 900	4 14
Do	3 900	do.	4,000	5 0
and for every Rs. 100 or part thereof in excess of Rs. 4 000				0 2

	Rs.		Rs.	Rs. As.
Where it exceeds	3,800	*but does not exceed*	4,000	1 4
Do.	4,000	do.	4,200	1 5
Do.	4,200	do.	4,400	1 6
Do.	4,400	do.	4,600	1 7
Do.	4,600	do.	4,800	1 8
Do.	4,800	do.	5,000	1 9
Do.	5,000	do.	5,200	1 10
Do.	5,200	do.	5,400	1 11
Do.	5,400	do.	5,600	1 12
Do.	5,600	do.	5,800	1 13
Do.	5,800	do.	6,000	1 14
Do.	6,000	do.	6,200	1 15
Do.	6,200	do.	6,400	2 0
Do.	6,400	do.	6,600	2 1
Do.	6,600	do.	6,800	2 2
Do.	6,800	do.	7,000	2 3
Do.	7,000	do.	7,200	2 4
Do.	7,200	do.	7,400	2 5
Do.	7,400	do.	7,600	2 6
Do.	7,600	do.	7,800	2 7
Do.	7,800	do.	8,000	2 8
and for every Rs. 200 or part thereof in excess of Rs. 8,000				0 1

TABLE VI

Showing the stamp-duty calculated on the **Mortgage of a Crop** *under Art. 41, cl. (b), up to Rs. 4,000.*

				Rs. As.
Where the sum secured does not exceed			Rs. 100	0 2
Where it exceeds	Rs. 100	but does not exceed	200	0 4
Do.	200	do.	300	0 6
Do.	300	do.	400	0 8
Do.	400	do.	500	0 10
Do.	500	do.	600	0 12
Do.	600	do.	700	0 14

	Rs		Rs	Rs As
Where it exceeds	700	but does not exceed	800	1 0
Do	800	do.	900	1 2
Do	900	do	1,000	1 4
Do.	1,000	do	1,100	1 6
Do	1,100	do	1,200	1 8
Do	1,200	do	1,300	1 10
Do	1,300	do	1,400	1 12
Do	1,400	do	1,500	1 14
Do	1,500	do.	1,600	2 0
Do	1,600	do	1,700	2 2
Do	1,700	do	1,800	2 4
Do	1,800	do	1,900	2 6
Do	1,900	do	2,000	2 8
Do	2,000	do	2,100	2 10
Do	2,100	do	2,200	2 12
Do	2,200	do.	2,300	2 14
Do.	2,300	do.	2,400	3 0
Do	2,400	do.	2,500	3 2
Do.	2,500	do.	2,600	3 4
Do.	2,600	do	2,700	3 6
Do	2,700	do.	2,800	3 8
Do.	2,800	do.	2,900	3 10
Do.	2,900	do	3,000	3 12
Do.	3,000	do.	3,100	3 14
Do.	3,100	do	3,200	4 0
Do	3,200	do.	3,300	4 2
Do	3,300	do	3,400	4 4
Do	3,400	do.	3,500	4 6
Do	3,500	do.	3,600	4 8
Do.	3,600	do.	3,700	4 10
Do.	3,700	do	3,800	4 12
Do	3,800	do.	3,900	4 14
Do	3,900	do.	4,000	5 0
and for every Rs 100 or part thereof in excess of Rs. 4,000				0 2

	Rs.		Rs.	Rs. As.
Where it exceeds	3 800	but does not exceed	4 000	1 4
Do.	4 000	do.	4 200	1 5
Do.	4 200	do.	4 400	1 6
Do	4 400	do	4 600	1 7
Do	4 600	do.	4 800	1 8
Do.	4 800	do.	5 000	1 9
Do	5 000	do	5 200	1 10
Do	5.200	do.	5.400	1 11
Do	5.400	do	5.600	1 12
Do.	5 600	do	5.800	1 13
Do.	5 800	do.	6 000	1 14
Do	6 000	do	6 200	1 15
Do.	6.200	do	6 400	2 0
Do.	6 400	do	6 600	2 1
Do	6 600	do	6 800	2 2
Do	6 800	do.	7 000	2 3
Do	7.000	do.	7 200	2 4
Do	7 200	do.	7 400	2 5
Do	7 400	do	7 600	2 6
Do	7 600	do	7 800	2 7
Do	7 800	do	8 000	2 8
and for every Rs. 200 or part thereof in excess of Rs. 8 000				0 1

TABLE VI.

Showing the stamp duty calculated on the **Mortgage of a Crop** *under Art 41, cl (b), up to Rs 4 000*

				Rs. As.
Where the sum secured does not exceed			Rs. 100	0 2
Where it exceeds Rs.	100	but does not exceed	200	0 4
Do.	200	do	300	0 6
Do	300	do	400	0 8
Do	400	do.	500	0 10
Do.	500	do	600	0 12
Do	600	do	700	0 14

	Rs.		Rs.	Rs. As.
Where it exceeds	700	but does not exceed	800	1 0
Do	800	do.	900	1 2
Do	900	do	1,000	1 4
Do.	1,000	do	1,100	1 6
Do	1,100	do	1,200	1 8
Do	1,200	do	1,300	1 10
Do	1,300	do	1,400	1 12
Do	1,400	do	1,500	1 14
Do.	1,500	do	1,600	2 0
Do	1,600	do	1,700	2 2
Do	1,700	do	1,800	2 4
Do	1,800	do	1,900	2 6
Do	1,900	do	2,000	2 8
Do	2,000	do	2,100	2 10
Do.	2,100	do	2,200	2 12
Do	2,200	do	2,300	2 14
Do.	2,300	do.	2,400	3 0
Do	2,400	do.	2,500	3 2
Do.	2,500	do.	2,600	3 4
Do.	2,600	do.	2,700	3 6
Do	2,700	do.	2,800	3 8
Do.	2,800	do.	2,900	3 10
Do.	2,900	do.	3,000	3 12
Do	3,000	do.	3,100	3 14
Do.	3,100	do.	3,200	4 0
Do	3,200	do.	3,300	4 2
Do	3,300	do	3,400	4 4
Do.	3,400	do.	3,500	4 6
Do	3,500	do.	3,600	4 8
Do.	3,600	do.	3,700	4 10
Do.	3,700	do.	3,800	4 12
Do	3,800	do.	3,900	4 14
Do	3,900	do.	4,000	5 0
and for every Rs. 100 or part thereof in excess of Rs. 4,000				0 2

TABLE VII.

Showing the stamp-duty calculated on Policies of Sea Insurance under Art 47 A (1), up to Rs 60,000

			Rs	Rs. As
Where the sum insured does not exceed			1 500	0 1
Where it exceeds	Rs. 1,500	but does not exceed	3 000	0 2
Do.	3 000	do	4 500	0 3
Do	4,500	do	6 000	0 4
Do	6 000	do	7,500	0 5
Do.	7 500	do	9 000	0 6
Do	9,000	do.	10 500	0 7
Do	10 500	do	12 000	0 8
Do	12 000	do	13 500	0 9
Do	13 500	do	15 000	0 10
Do	15 000	do	16 500	0 11
Do	16 500	do.	18 000	0 12
Do	18 000	do	19 500	0 13
Do	19 500	do	21 000	0 14
Do.	21 000	do	22 500	0 15
Do	22 500	do	24 000	1 0
Do.	24 000	do	25,500	1 1
Do	25 500	do	27 000	1 2
Do	27 000	do	28 500	1 3
Do.	28 500	do	30 000	1 4
Do.	30 000	do	31 500	1 5
Do.	31 500	do	33 000	1 6
Do.	33 000	do	34 500	1 7
Do.	34 500	do	36 000	1 8
Do.	36 000	do.	37 500	1 9
Do	37 500	do.	39 000	1 10
Do	39 000	do	40 500	1 11
Do	40 500	do	42 000	1 12
Do.	42 000	do	43 500	1 13
Do.	43,500	do.	45,000	1 14
Do.	45,000	do	46 500	1 15
Do.	46,500	do.	48 000	2 0

	Rs.		Rs.	Rs. As.
Where it exceeds	43 000	but does not exceed	43,500	2 1
Do	49 500	do	51,000	2 2
Do	51 000	do	52,500	2 3
Do	52 500	do	54,000	2 4
Do	54 000	do	55 500	2 5
Do	55 500	do	57 000	2 6
Do	57 000	do	58,500	2 7
Do	58,500	do	60 000	2 8
and for every full sum of Rs 1 500		or part thereof in excess of Rs	60,000	0 1

TABLE VIII

Showing the stamp-duty calculated on Policies of Insurance under Art 47, *clauses* A (2), C (*b*) and D, *up to Rs* 80,000

			Rs	Rs As	Rs. As
Where the sum insured does not exceed			1,000	0 2	0 6
Where it exceeds Rs	1 000	but does not exceed	2,000	0 4	0 12
Do	2 000	do	3 000	0 6	1 2
Do	3 000	do	4,000	0 8	1 8
Do	4 000	do	5 000	0 10	1 14
Do.	5,000	do.	6 000	0 12	2 4
Do	6 000	do	7,000	0 14	2 10
Do	7,000	do.	8 000	1 0	3 0
Do	8 000	do	9 000	1 2	3 6
Do	9 000	do	10 000	1 4	3 12
Do.	10 000	do.	11 000	1 6	4 2
Do.	11 000	do	12,000	1 8	4 8
Do	12,000	do.	13 000	1 10	4 14
Do.	13 000	do.	14,000	1 12	5 4
Do	14 000	do.	15 000	1 14	5 10
Do	15,000	do	16 000	2 0	6 0
Do.	16,000	do.	17,000	2 2	6 6
Do	17,000	do	18 000	2 4	6 12
Do	18 000	do.	19 000	2 6	7 2
Do	19 000	do	20 000	2 8	7 8

			Rs.	Rs. As.	Rs. As.
Where it exceeds	20,000	but does not exceed	21,000	2 10	7 14
Do.	21,000	do	22,000	2 12	8 4
Do	22,000	do	23,000	2 14	8 10
Do	23,000	do	24,000	3 0	9 0
Do.	24,000	do	25,000	3 2	9 6
Do.	25,000	do.	26,000	3 4	9 12
Do	26,000	do	27,000	3 6	10 2
Do.	27,000	do	28,000	3 8	10 8
Do.	28,000	do.	29,000	3 10	10 14
Do.	29,000	do	30,000	3 12	11 4
Do	30,000	do.	31,000	3 14	11 10
Do.	31,000	do	32,000	4 0	12 0
Do.	32,000	do	33,000	4 2	12 6
Do	33,000	do	34,000	4 4	12 12
Do	34,000	do	35,000	4 6	13 2
Do.	35,000	do	36,000	4 8	13 8
Do.	36,000	do	37,000	4 10	13 14
Do.	37,000	do	38,000	4 12	14 4
Do	38,000	do	39,000	4 14	14 10
Do.	39,000	do	40,000	5 0	15 0
Do	40,000	do	41,000	5 2	15 6
Do	41,000	do	42,000	5 4	15 12
Do.	42,000	do	43,000	5 6	16 2
Do	43,000	do	44,000	5 8	16 8
Do.	44,000	do	45,000	5 10	16 14
Do.	45,000	do	46,000	5 12	17 4
Do.	46,000	do.	47,000	5 14	17 10
Do.	47,000	do	48,000	6 0	18 0
Do	48,000	do	49,000	6 2	18 6
Do.	49,000	do	50,000	6 4	18 12
Do.	50,000	do.	51,000	6 6	19 2
Do.	51,000	do.	52,000	6 8	19 8
Do.	52,000	do.	53,000	6 10	19 14
Do	53,000	do	54,000	6 12	20 4
Do.	54,000	do.	55,000	6 14	20 10
Do.	55,000	do.	56,000	7 0	21 0

	Rs.		Rs.	Rs. As.	Rs. As.
Where it exceeds	56,000	but does not exceed	57,000	7 2	21 6
Do.	57,000	do.	58,000	7 4	21 12
Do.	58,000	do.	59,000	7 6	22 2
Do.	59,000	do.	60,000	7 8	22 8
Do.	60,000	do.	61,000	7 10	22 14
Do.	61,000	do.	62,000	7 12	23 4
Do.	62,000	do.	63,000	7 14	23 10
Do.	63,000	do.	64,000	8 0	24 0
Do.	64,000	do.	65,000	8 2	24 6
Do.	65,000	do.	66,000	8 4	24 12
Do.	66,000	do.	67,000	8 6	25 2
Do.	67,000	do.	68,000	8 8	25 8
Do.	68,000	do.	69,000	8 10	25 14
Do.	69,000	do.	70,000	8 12	26 4
Do.	70,000	do.	71,000	8 14	26 10
Do.	71,000	do.	72,000	9 0	27 0
Do.	72,000	do.	73,000	9 2	27 6
Do.	73,000	do.	74,000	9 4	27 12
Do.	74,000	do.	75,000	9 6	28 2
Do.	75,000	do.	76,000	9 8	28 8
Do.	76,000	do.	77,000	9 10	28 14
Do.	77,000	do.	78,000	9 12	29 4
Do.	78,000	do.	79,000	9 14	29 10
Do.	79,000	do.	80,000	10 0	30 0
and for every full sum of Rs. 1,000, or part thereof, in excess of Rs. 80,000				0 2	0 6

			Rs.	Rs. As.	Rs. As.
Where it exceeds	20,000	but does not exceed	21,000	2 10	7 14
Do	21,000	do	22,000	2 12	8 4
Do	22,000	do	23,000	2 14	8 10
Do	23,000	do	24,000	3 0	9 0
Do	24,000	do	25,000	3 2	9 6
Do.	25,000	do.	26,000	3 4	9 12
Do.	26,000	do	27,000	3 6	10 2
Do.	27,000	do	28,000	3 8	10 8
Do	28,000	do	29,000	3 10	10 14
Do.	29,000	do	30,000	3 12	11 4
Do	30,000	do	31,000	3 14	11 10
Do.	31,000	do	32,000	4 0	12 0
Do.	32,000	do	33,000	4 2	12 6
Do	33,000	do	34,000	4 4	12 12
Do	34,000	do	35,000	4 6	13 2
Do.	35,000	do	36,000	4 8	13 8
Do.	36,000	do	37,000	4 10	13 14
Do.	37,000	do	38,000	4 12	14 4
Do	38,000	do	39,000	4 14	14 10
Do	39,000	do	40,000	5 0	15 0
Do	40,000	do	41,000	5 2	15 6
Do	41,000	do	42,000	5 4	15 12
Do	42,000	do	43,000	5 6	16 2
Do.	43,000	do	44,000	5 8	16 8
Do	44,000	do	45,000	5 10	16 14
Do.	45,000	do	46,000	5 12	17 4
Do.	46,000	do.	47,000	5 14	17 10
Do.	47,000	do	48,000	6 0	18 0
Do	48,000	do	49,000	6 2	18 6
Do.	49,000	do	50,000	6 4	18 12
Do.	50,000	do.	51,000	6 6	19 2
Do.	51,000	do	52,000	6 8	19 8
Do.	52,000	do.	53,000	6 10	19 14
Do	53,000	do	54,000	6 12	20 4
Do.	54,000	do.	55,000	6 14	20 10
Do.	55,000	do.	56,000	7 0	21 0

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